

UST POLICY COMMISSION MEETING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Phoenix, Arizona

September 18, 2002

9:13 o'clock a.m.

UST POLICY COMMISSION

JENNIFER SCHUCK, RMR, CRR

Certified Court Reporter

Certificate No. 50020

1 THE MEETING OF THE UST POLICY COMMISSION held on
2 September 18, 2002, at 9:13 o'clock a.m., at the Arizona
3 Department of Environmental Quality, 1110 W. Washington
4 Street, Room 250, Phoenix, Arizona, in the presence of:

5 Michael O'Hara, Chairman

6 Roger Beal

Ian Bingham

7 Elijah Cardon

Theresa Foster

8 Harold Gill

Nancy Jamison

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10 ABSENT MEMBERS:

11 Michael Denby, Vice Chairman

Karen Holloway

Myron Smith

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9:13 o'clock a.m.

P R O C E E D I N G S

CHAIRMAN O'HARA: I'm going to go ahead and call this meeting to order. Thank you for being here for the September meeting of the UST Policy Commission. We don't yet have a quorum. So we are going to rearrange the agenda quickly and come back to Item 2.

First, we will call off with a roll-call on my left.

MS. FOSTER: I'm Theresa Foster.

MR. BINGHAM: Ian Bingham.

MR. BEAL: Roger Beal.

MR. O'HARA: Mike O'Hara.

MS. JAMISON: Nancy Jamison.

MR. GILL: Hal Gill.

CHAIRMAN O'HARA: Okay. We are going to skip Item 2 and come back since we need a quorum. We have a pretty lengthy agenda today, so hopefully we can get through most of it and try and stay concise.

Starting with Item 3 are ADEQ updates. And the first item is a presentation and discussion of the 2003 State Assurance Fund cost ceilings. I think DEQ is prepared to make a presentation. Tara.

MS. ROSIE: Tara Rosie, ADEQ staff. What we

1 have done is we have given the Policy members three
2 documents. The first document is a summary document. The
3 second is a draft copy of general notes for the 2003
4 cost ceilings. And then there is a copy of the
5 descriptions for the 2003 cost-ceiling items.

6 The summary document was prepared to identify
7 for you differences between this document and previous
8 cost ceilings. And after several meetings with
9 stakeholders, we did have quite a bit of input from the
10 stakeholders; and we tried to address all of their
11 comments and concerns. And I think when you go through
12 the summary, you'll notice those areas where we attempted
13 to address their concerns and either implemented them in
14 the new cost ceilings or determined that, in fact, the old
15 cost ceilings were not appropriate and had to be deleted.

16 We hope to have the survey sent in October
17 because, as you know, we're shooting for the December 15th
18 date of having all of this together.

19 CHAIRMAN O'HARA: You want to send surveys
20 out in October, you said?

21 MS. ROSIE: That's what we are shooting for.

22 CHAIRMAN O'HARA: Did you want approval from
23 the Commission on this document as policy? Is that
24 what -- or you are just presenting it to us and then
25 you'll do the surveys?

1 MS. ROSIE: We are presenting it to you for
2 your review.

3 CHAIRMAN O'HARA: Do we need to vote on it,
4 approve it?

5 MR. GILL: No, because we haven't seen it
6 yet, this is the first time. And we haven't looked at it
7 at the subcommittee or anything.

8 CHAIRMAN O'HARA: The problem is going to be
9 if they are going to go ahead and send surveys in October
10 and we come back and say, We don't like X, Y, Z, the
11 surveys are out of the door. So what's the recommended
12 process?

13 MR. GILL: Start doing subcommittee meetings
14 immediately.

15 CHAIRMAN O'HARA: On this document.

16 MR. GILL: And do it every day if we have
17 to. We have not had a chance to look at it. We basically
18 had one substantive discussion with stakeholders on one
19 issue, maybe two, because we've never seen the document
20 yet. And so we -- it needs to be discussed, granted.

21 I understand with the restructuring, that caused
22 some problems with the time frames. But we have to get
23 into the document. And this is exactly what we were
24 waiting for, was a document to start reviewing. And I
25 think there is a lot of -- had been a lot of discussion

1 prior to and while this has been coming. We think that
2 the issues that were -- many of the issues that were of
3 concern had been addressed. But we still have not had
4 anything to look at.

5 CHAIRMAN O'HARA: Nancy.

6 MS. JAMISON: Mr. Chairman, Tara, what is
7 the purpose of the surveys? To whom will they be sent?
8 What are you going to do with the surveys when you get
9 them back? Are they to get input on making the final
10 determinations on cost ceilings?

11 MS. ROSIE: Yes, that's exactly correct.

12 MS. JAMISON: And who will they go out to?

13 MS. ROSIE: They go out to the consultants
14 and the contractors. The cost ceilings are set up with
15 different sections, some for consultant tasks, some for
16 analytical/laboratory tasks, some for drilling tasks. And
17 those categories will be surveyed with the survey groups
18 that perform the actual activities.

19 MS. JAMISON: Mr. Chairman, I note that one
20 of our mandates is to look at or at least to report on
21 ways to reduce future claims to the assurance account and
22 encourage compliance with new tank standards by lowering
23 claim ceilings and increasing co-payments. Is all of this
24 related to that particular item?

25 CHAIRMAN O'HARA: Feel free to jump in. But

1 I think that's really talking about, there is some statute
2 that says you are only allowed after a release, say, after
3 2001, you get 50 percent instead of 90 percent. There is
4 things like that. I think it is addressing increasing the
5 co-payment amounts and lowering the claim ceilings.

6 What this is, I believe, doing is actually
7 setting amounts for what is and isn't reimbursable, how
8 much of those amounts -- specific amounts are
9 reimbursable. It's consistent in the same vein to say
10 protecting money for the State Assurance Fund. It is
11 along those same lines.

12 I think these cost ceilings are predominantly --
13 not only control how much money is spent but also supposed
14 to ease the process and burden -- administrative burden of
15 submitting applications and reviewing applications. It is
16 a task-based system, so you're basically lumping it.

17 MR. GILL: That's the main reason that the
18 regulated public felt we needed a lot of discussion and
19 input on the cost ceilings as they go out for survey
20 because we definitely cannot say over the last year,
21 18 months, that the process has been working smoothly. A
22 lot of the problems were because of misunderstandings in
23 the cost ceilings and how they were to be used on both
24 sides. So that really needs to be hashed out.

25 CHAIRMAN O'HARA: Tara, if we approve these

1 in the next Policy Commission meeting in October, will
2 that give you adequate time to get your surveys out? Do
3 we have agreement we can digest this and then put it on
4 the agenda for next meeting?

5 Okay. Any other comments or discussion?

6 MS. FOSTER: Mr. Chairman, I would like to
7 ask DEQ what percentage of consultants and contractors
8 respond back to the surveys and is it an adequate
9 percentage.

10 MS. ROSIE: I would have to look that up.
11 But I believe in the 2000 cost schedules, it was
12 approximately 20 to 30 percent that responded back on each
13 item.

14 MS. FOSTER: With that being so low, is DEQ
15 looking at doing their own internal surveys since the DEQ
16 database has all of these numbers anyway and you have a
17 better handle on what you are paying out? I would suggest
18 that DEQ in the future think about doing an internal
19 survey so they can go back and see what they have actually
20 paid for every single one of the cost elements instead of
21 asking the consultants to work 10, 20 hours putting this
22 document together, if it does take them that long at no
23 charge to them and no -- they can't bill anybody from it.
24 If DEQ already has the numbers, why doesn't DEQ use those
25 numbers?

1 MR. GILL: Theresa, I appreciate you looking
2 out for us. And that is, indeed, the case. We spend a
3 lot of hours going through the survey once it comes out.
4 The only problem with looking at past costs is that you
5 are looking at any number of different kinds of contracts.
6 And some of the major oil companies have large contracts
7 where in the past, the companies that bid for those
8 contracts came in with the absolute rock-bottom prices
9 that they could get based on the volume of work. If they
10 are using those prices in figuring an average for that
11 particular activity for consultants that do not have that
12 volume of work, they can't do it for that amount of money.

13 MS. FOSTER: But isn't that a more accurate
14 number than 20 to 30 percent of the people responding
15 back?

16 MR. GILL: Not for current costs and
17 activities, I don't think. I think -- having worked on
18 that contract and having worked on other contracts, there
19 is a huge discrepancy in cost that would be provided by
20 the consultant to the owner-operator based on a huge
21 volume of work.

22 MS. FOSTER: So then my understanding is
23 that the cost-ceiling survey that comes back is inflated,
24 is not an actual cost?

25 MR. GILL: No. It's based on the current

1 cost for that -- and that's why we spent so much time and
2 need to spend so much time reviewing the item descriptions
3 to make sure that it's absolutely clear what this item
4 description is supposed to include.

5 But what I was saying is when the -- if you use
6 past data that includes contracts and costs that are based
7 on volume of work, it isn't representative of what
8 probably -- well, actually, most, if not all, of the other
9 consultants are doing that work for because they do not
10 have that volume of work to -- They can provide a small
11 cost for doing an item as long as they are provided the
12 volume of work -- a large volume of work to work on. And
13 the other consultants do not have that option, so they
14 can't meet that cost.

15 MS. FOSTER: But if that was included in the
16 survey to see the upper and the lower end, I would think
17 by statistical analysis you could determine what's a
18 median price because that was the actual cost to the
19 owner-operator.

20 MR. GILL: With only a couple of them. Most
21 owner-operators don't have that volume to provide.

22 MS. FOSTER: They would have 100 percent of
23 the information rather than 20 or 30 percent that are
24 returned in the surveys.

25 MR. GILL: The only way to do that would

1 be -- not prorate, but give a certain number.

2 MS. FOSTER: Take an average.

3 MR. GILL: That's what I'm saying. For an
4 average, that would drop the average way down. That would
5 only -- it would affect a large number of consultants that
6 do not have that option. You would have to almost put
7 a -- determine what percentage do we use in this overall
8 number for this rate, you know, like that. And I think it
9 would be extremely difficult. It would not be
10 representative of what's being done currently.

11 MS. FOSTER: If you apply statistics to it
12 to determine what 95 percent confidentiality rate or
13 whatever -- I'm not a statistician -- I think it could be
14 determined.

15 MR. GILL: That's one of the things that
16 need to be discussed in the cost ceilings, is how we come
17 about with the final cost once they get the survey back.

18 CHAIRMAN O'HARA: And the statute calls for
19 a variety of sources to create the cost ceilings. Surveys
20 being one of those. Other is national market data. I
21 think there is a whole list of things in statutes they
22 could use to create those cost ceilings.

23 MS. FOSTER: The regulations don't say it
24 has to be -- the survey has to be a consultant survey. It
25 could be an internal survey.

1 CHAIRMAN O'HARA: Service provider. It
2 could be an internal survey. It could be a variety of
3 sources. I think they have that flexibility.

4 MS. JAMISON: Mr. Chairman, one more
5 question. This may have been what Theresa was getting to.
6 There are state-lead sites.

7 MS. ROSIE: Correct.

8 MS. JAMISON: How do you factor the cost
9 from the state-lead sites? Is that one of the elements
10 that you look at?

11 MS. ROSIE: I believe just as Mr. Chairman
12 pointed. We intend to use what the rule allows us to use
13 for the different criteria for evaluating and producing
14 new cost ceilings. And since some of those are
15 procurement related and general industry standards, that's
16 where we would be looking at the state-lead numbers as
17 well as other procurement numbers.

18 MS. JAMISON: Thank you.

19 CHAIRMAN O'HARA: Any other comments?

20 Anyone from the public have a comment?

21 Mr. Beck.

22 MR. BECK: Brian Beck with Beck
23 Environmental. There is a few other things in these
24 cost ceilings. Theresa, especially with the City of
25 Phoenix, permit costs within the City of Phoenix have gone

1 up almost 200 percent. There is a lot of new
2 circumstances. The other thing, too, that the current
3 cost ceilings don't have in it is the new air quality
4 annual improvement for people who are operating TDS
5 systems of \$2,000. Those have to be included.

6 There is all sorts of new things that
7 continually come out that have to be included into these
8 things that get left out. Right now, because it is not
9 part of the cost ceilings and it wasn't part of the old
10 pre-approval because nobody knew the \$2,000 was coming in,
11 ADEQ is denying those costs; and we have to go through
12 appeals.

13 CHAIRMAN O'HARA: Thank you.

14 Anyone else?

15 MR. GILL: I'll just say I will get with
16 Judy after the meeting or Tara, whoever needs to be here,
17 Bob, to figure out how we can set up these meetings to get
18 it taken care of before next meeting.

19 CHAIRMAN O'HARA: Anybody else?

20 MR. VANNAIS: Leon Vannais, Tierra Dynamics.
21 I had a question for Tara Rosie. You estimated 20 to
22 30 percent of the responses received at the last survey.
23 Is that 20 to 30 percent of what number of consultants,
24 the prequalification list?

25 MS. ROSIE: I believe that's how the

1 Peterson sent out that information, but I would have to
2 look into it.

3 MR. VANNAIS: I would be interested to know
4 of that 20 to 30 percent of the prequalification list that
5 apparently responded to that survey, how much actual work
6 did that 20 to 30 percent of those consultants contribute
7 to corrective actions that were ultimately reimbursed by
8 the State Assurance Fund.

9 MS. ROSIE: Because the survey is done in a
10 manner in which the surveyed are nonrisk, I don't believe
11 you could get that information.

12 MR. VANNAIS: Probably would be safe to say
13 that the people who were most interested in addressing
14 these potential cost ceilings would be the people who were
15 most interested in doing the corrective actions. So you
16 could have 90 percent of the work being done and only
17 20 percent response. But that 20 percent response would
18 represent 90 percent of the corrective actions that are
19 being conducted in the state of Arizona.

20 CHAIRMAN O'HARA: Okay. Any other comments
21 from the public? Thank you.

22 We will have the technical subcommittee
23 meetings. Hal, you will let us know on those?

24 MS. GILL: Yes.

25 CHAIRMAN O'HARA: Let the record reflect

1 Elijah Cardon is with us.

2 Item B, presentation of organization chart for
3 new claims review unit.

4 MR. ROCHA: That's something I need to
5 address. My name is Bob Rocha. I'm with DEQ. Last
6 meeting I promised I was going to have an org chart for
7 you. I failed to do that. We've had a couple of other
8 changes in the program. And one of them, obviously our
9 director -- our acting director is there. And I was
10 unable to obtain final approval of that org chart. But
11 I'll get that org chart with the minutes to you.

12 That is a situation I was not able to
13 accomplish. I apologize for that. But you will have it.
14 It is not a secret. And it is pretty well structured in
15 the same way it was before. We have -- but we've had
16 turnover and we've got to realign. Please understand.
17 Thank you.

18 CHAIRMAN O'HARA: Thank you.

19 Item C, presentation, discussion of the new LUST
20 assignment policy. Ian.

21 MR. BINGHAM: That is me. And I will
22 continue on with the apologies from the agency. While we
23 were shooting for today, we did not meet that deadline.
24 We are still working on it. We are actually setting up
25 weekly meetings internally to ensure that I don't miss the

1 October meeting to be able to give this to the Policy
2 Commission.

3 CHAIRMAN O'HARA: Okay. If you get that
4 completed prior to that meeting, is it possible you can
5 send it to the Commission members?

6 MR. BINGHAM: Yeah.

7 CHAIRMAN O'HARA: That will be on the agenda
8 next meeting, okay.

9 Item D, presentation and discussion of SAF and
10 corrective action section performance measures. I believe
11 that came from last month's meeting where we talked about
12 getting monthly updates.

13 MS. NAVARRETE: Tara has just gone to get
14 the reports because there was some things that were left
15 off of it, and they will be furnished to you before the
16 end of this meeting. And that is the -- I'm Judy
17 Navarrete. Sorry. And that will be our numbers for last
18 month and then all the numbers of anything over 90 days,
19 over 180 days, or over a year. And so that will be
20 furnished.

21 And I know that Roger Beal asked for a trend
22 analysis to be started. And I want to do that, but I need
23 at least two months' data. This new section was only
24 formed about six weeks ago, so we do have August data.
25 That was another thing I wanted to present to the

1 Commission this morning, was I would like to do this
2 report month-to-month. So the report that you are going
3 to get this morning is for August because that's what I
4 have to do for the Governor's office. So I would like to
5 do it from month to month to month instead of breaking it
6 up and doing one at the end of the month and then one for
7 the Commission meeting during the middle of the month
8 because in order to do an analysis of the data, you need
9 consistent time periods. So seeing as how I have to do a
10 Governor's report and a monthly report, I would like to do
11 that in those blocks. And that's the information you'll
12 receive this morning.

13 And then in the next Policy Commission meeting,
14 you will receive the numbers for September. And then
15 maybe we can start a little analysis somehow of how we're
16 doing even in the first two months. I mean, it will be a
17 little something. But we'll follow through on that.

18 MR. BEAL: It wasn't so much -- I'm Roger
19 Beal -- for you folks to do an analysis. It was just
20 simply an idea, put it down so we could look at each month
21 and say it's getting better or worse.

22 MS. NAVARRETE: Right.

23 MR. BEAL: Very simple but easy to track.
24 You don't have to go back through copious piles of paper.

25 MS. NAVARRETE: Thank you. Thank you. But,

1 anyway, the report will be here. It's just getting a
2 little more updated.

3 CHAIRMAN O'HARA: Thank you.

4 MS. NAVARRETE: Thank you.

5 CHAIRMAN O'HARA: Comments?

6 Moving on to Item E, update discussion of ADEQ's
7 new risk assessment unit. Anyone from DEQ like to give us
8 an update?

9 MR. BINGHAM: Until yesterday, I did not
10 know this was an agenda item for today. So I was not --

11 MR. O'HARA: I think that came from the
12 minutes of the last meeting when we talked about this new
13 risk assessment unit that's going to be reviewing risk
14 assessment and there will be staffing. And somebody asked
15 if DEQ could provide an update.

16 MR. BINGHAM: The section manager is
17 actually on vacation. That would be the appropriate
18 person to discuss that.

19 CHAIRMAN O'HARA: Okay. So we'll put that
20 on the agenda for next meeting.

21 Any other comments from members of the public or
22 the Commission on DEQ updates?

23 Moving on to Item 4, technical subcommittee
24 update. I will turn this over to Hal.

25 MR. GILL: The 4A, it was basically handled

1 in 4B. The letter that was handed out last time, it was
2 requested by Elijah Cardon to -- asked if I could hold a
3 technical subcommittee meeting to discuss the issues in
4 that letter. And so basically those issues are handled in
5 4B.

6 And 4B, we held a technical subcommittee meeting
7 Monday, the 16th. I sent around numerous e-mails to DEQ
8 and Policy Commission stakeholders -- or Policy Commission
9 and stakeholders letting them know how important the
10 meeting was to attend. And, unfortunately, originally DEQ
11 cancelled our meeting and then we rescheduled. And,
12 unfortunately, disappointed but they chose not to attend.

13 What I'm handing out is the -- I'll hand them
14 out in order. The first thing is the sign-in sheet of
15 people that showed up. That list represents approximately
16 over 60 owner-operators, three members from the Policy
17 Commission, past manager of the CRU and personnel of the
18 original CRU unit, the past SAF administrator, and
19 numerous consultants and stakeholders. But it was a large
20 group of people. And primarily I sent numerous requests
21 around because I wanted as many owner-operators and Policy
22 Commission members as possible and had hoped for
23 attendance by DEQ.

24 What I am sending around now are the
25 recommendations that came out of the subcommittee meeting.

1 And basically we met. At the end of each section, as was
2 on the original agenda, we discussed the recommendations.
3 We came to a consensus on the recommendations that were
4 made. And then over the last couple days, I typed these
5 all up, sent them out to all of the people who attended,
6 and then asking for input and corrections. And that was
7 what -- and these are the recommendations.

8 Now what I am sending out now are just back-up
9 to these discussions and recommendations. Basically, I'm
10 putting forward the consensus document to the Policy
11 Commission for a vote to accept these recommendations to
12 send on to the director, the president of the Senate,
13 House, and Governor.

14 MS. JAMISON: Mr. Chairman, perhaps Mr. Gill
15 could explain packet by packet what he has just given us.

16 MR. GILL: Again, as I said, the first thing
17 is the recommendations; and all the things that are behind
18 there are just back-up for the discussion that we held.
19 And as I said, I sent out to everybody that I could find,
20 people on the street, letting them know how important this
21 meeting was to come to, how important it was that you be
22 there. And I think we could probably hold three Policy
23 Commission meetings and not get through all this
24 information.

25 So I'm -- I believe that everyone should have

1 been at that meeting if they were interested in hearing
2 what the discussion was, being involved in the
3 discussions, and coming up with this consensus document.

4 CHAIRMAN O'HARA: Hal, real quickly, just go
5 over it. The chart, where did this come from?

6 MR. GILL: It was made up from the meeting
7 for the meeting.

8 MS. JAMISON: By whom and where did the data
9 come from?

10 MR. GILL: I can ask for different people's
11 input on that. But basically we'd have to go through
12 everything. This is just back-up for different
13 recommendations. As you can probably tell, I am a little
14 upset that people didn't come to this meeting. If they
15 were interested in all this data, they probably should
16 have shown up.

17 MS. FOSTER: That still doesn't answer the
18 question. We have a chart in front of us. And I need to
19 validify where this chart came from, where the numbers
20 came from. Did it come from DEQ? Did it come from --

21 MR. GILL: It is all DEQ data. I don't
22 think DEQ made it up.

23 CHAIRMAN O'HARA: DEQ didn't produce this
24 chart?

25 MR. GILL: No.

1 CHAIRMAN O'HARA: Any further discussion or
2 education you want to give us on this? I know a lot of us
3 weren't there. General overview? Can you give us just
4 kind of a subject matter of what the meeting was.

5 MR. GILL: Well, the subject matter of the
6 meeting was that we've got a broken program.

7 CHAIRMAN O'HARA: State Assurance Fund?

8 MR. GILL: And corrective action section as
9 a whole. We wanted to go through the program with input
10 from all parties as we've done in the past in numerous
11 stakeholder meetings for many different subjects, to go
12 through the entire program, see if we could get back
13 on-line the way we have been for several years to where
14 the program was working for all parties involved. And
15 we're at the point now to where there is no communication,
16 and I mean zero, with the Department. And we needed to
17 meet as a group to discuss all the issues and look at how
18 can we make each thing better.

19 And that was made real clear in a number of
20 e-mails that were sent out. And as I said, I wanted, and
21 believe I got, input and attendance from a wide range of
22 individuals. It wasn't just a group of consultants. It
23 was -- As I said, there was over 60 owner-operators
24 represented, the Policy Commission members that did show
25 up. And we got past DEQ personnel that had worked in

1 these specific sections to compare how it was done in the
2 past, how it was working now, look at how they did their
3 job. And that's what that chart shows, basically is how
4 it was working in the past and that it did work. It went
5 down at that time, granted the backlog was much smaller.
6 It was 300 plus. But it went down to zero.

7 And that was really the point of this whole
8 meeting, was to look at all the different processes that
9 we were aware of. And, obviously, DEQ, if it had been
10 there, would have been able to show us, tell us more
11 process and provide input as to why particular things
12 weren't working. That was -- We needed a dialogue. As a
13 matter of fact, for those that were lucky enough to be
14 down at the Senate hearing yesterday for the sunset
15 report, the legislature told us to get a dialogue going.
16 Mr. Tobin stood up and said he wanted a dialogue. And
17 this was the first opportunity to do that. And it was a
18 missed opportunity by some people.

19 CHAIRMAN O'HARA: Nancy.

20 MS. JAMISON: Mr. Chairman, I recognize that
21 there are some contentious issues and there is a lot of
22 history here. But it seems to me you don't get reports
23 from a state agency or meaningful input from a state
24 agency by sending an e-mail saying that the technical
25 subcommittee is going to be discussing these issues. I

1 did see an e-mail response from Mr. Rocha questioning
2 whether some of the items on the technical subcommittee
3 agenda were really appropriate for that body to be
4 considering. I don't want to put -- I don't want to try
5 to put Mr. Rocha's words in my mouth because I'll get it
6 wrong.

7 But I think in terms of business-like
8 procedures, we try to cram a lot into this monthly
9 meeting. And when I look at that technical subcommittee
10 agenda, I thought they must be planning a three-day
11 meeting because there were so many items on the agenda.
12 And I just don't see how you can get meaningful input and
13 come to valid conclusions in that manner. So I don't know
14 what the -- I don't know what the answer is. But I'm
15 certainly not prepared to sign onto these recommendations
16 without a lot more review and input from other sources.

17 CHAIRMAN O'HARA: Thank you.

18 Mr. Cardon.

19 MR. CARDON: I did attend the technical
20 subcommittee meeting. And I think it's a fair
21 representation to say that we did not cover -- Didn't we
22 cover about the first half of --

23 MR. GILL: We did about three-quarters
24 actually.

25 MR. CARDON: Three-quarters of the agenda.

1 So about three-quarters of the agenda was covered that was
2 prepared in advance for the subcommittee. The work that
3 had been done prior to the technical subcommittee meeting
4 was monumental. Many people came prepared with specific
5 recommendations and suggestions. It did seem to me that
6 the agenda of the committee dealt with matters that have
7 been longstanding that have been discussed at great length
8 and great detail in many meetings in the past.

9 And the conclusions of the technical
10 subcommittee were not necessarily revelatory or brand new
11 but were a consensus of opinions of work that has existed
12 for quite some time. The recommendations are very clear,
13 very straightforward. It does seem to me that if the
14 committee were going to -- this committee were going to
15 act, that it would be appropriate to simply read through
16 the recommendations. They will be very self-explanatory
17 and giving the members of the committee that were not able
18 to attend the technical subcommittee the opportunity to
19 hear the specifics of the recommendation.

20 So my suggestion would be that we do simply read
21 through the specifics and make sure that all members of
22 the committee understand them.

23 MR. GILL: I can provide some information on
24 the background, back-up data. And as far as these two
25 charts, the data was actually derived from charts provided

1 to the UST Policy Commission over the past one and a half
2 years. This is data that we were given as a Commission.
3 The graphs were done using the ADEQ data. And this was
4 data provided by Ian and Patricia over the past one and a
5 half years.

6 And that -- this one basically goes to 1B in the
7 recommendations. 1A is a new recommendation. The 1B
8 also -- this is the minutes from the meeting where I
9 presented the concept for the CRU to the legislature.

10 MS. JAMISON: When was that?

11 MR. GILL: July '97. Whether the 24th was
12 the actual date of the meeting, I'm not sure. This was
13 prior to the legislature voting on the nine FTEs for the
14 CRU section.

15 MS. JAMISON: In July they were not in
16 session. This was prior to a legislative session?

17 MR. GILL: Yeah, mm-hmm.

18 And this packet contains the meeting agenda that
19 I presented to the legislature. It was a DEQ printout of
20 the update meeting. That's the last three where they
21 provided their numbers and what they were -- And, again,
22 this stakeholder group had a large number of DEQ,
23 administrative, Mr. Cardon was in that stakeholder group,
24 myself, another -- one or two consultants and a number of
25 DEQ. And a concept was derived out of that meeting as to

1 how to best move the SAF process forward. So these are
2 relatively self-explanatory, especially the first one. In
3 the presentation to the legislature, it has to be clear
4 and rather simplified.

5 And the second one is just determinations, how
6 we determined that this concept would save money, which
7 was the selling point to the legislature. One of the
8 recommendations, actually two, but one in the first group,
9 for the SAF is basically recommending a format for
10 reporting because we -- And I know Judy is working very
11 hard. And she has a lot of the baggage that has come
12 along with this, and it is not her fault.

13 But we are basically pretty sick and tired of
14 the reporting that we have been getting. We ask for
15 specific things, and maybe we're not really good at
16 explaining it but this clarifies it. And that's a
17 recommendation from the subcommittee that we would like to
18 see the reporting done on these forms. And this is right
19 out of the database that DEQ has. And it even has how to
20 query it.

21 CHAIRMAN O'HARA: Mr. Cardon.

22 MR. CARDON: Mr. Chairman, I am tracking
23 with comments that Subcommittee Chairman Hal has said. It
24 does seem that had I, for example, not been able to attend
25 the subcommittee meeting and being a member of this group,

1 it would be nice to either, number one, review the
2 specifics of this recommendation or be given -- in this
3 meeting now or be given the time to review it in
4 preparation for a vote maybe at the next meeting.

5 My personal preference would be to go ahead and
6 simply touch base, review, read through the recommendation
7 and see if there are any particular questions or comments
8 that one would like to make and see if we couldn't bring
9 this to a vote today.

10 CHAIRMAN O'HARA: Any other comments?

11 MR. CARDON: That would be -- Excuse me.
12 But I would certainly defer to Chairman Hal's decision
13 being the chairman of the technical subcommittee. But it
14 would seem that to give the benefit of the doubt to the
15 rest of the Commission here, we ought to simply read
16 through the recommendations.

17 CHAIRMAN O'HARA: I agree. It is a lot to
18 digest.

19 Ms. Foster.

20 MS. FOSTER: Mr. Chairman, I have -- I think
21 we need to step back a moment and think about what this
22 Commission is for. My understanding is that we are here
23 to determine or to assist DEQ in developing policies and
24 overall procedures of how to do the program. I don't
25 think it is the purpose of this Commission to go deep into

1 the operation and determine how much experience each staff
2 member should have in filling out a whole menagerie of
3 forms that will take manpower away from reviewing our
4 claims.

5 I have a real concern that stakeholders believe
6 that this Commission should dive deep into the operation
7 of DEQ and fix the problem. That's not the purpose of
8 this Commission. The Commission is more broad-based. I
9 don't want to get into their day-to-day operations.

10 MR. GILL: I would like to respond. What
11 the purpose of the Commission is to evaluate the overall
12 effectiveness of the Underground Storage Tank Program.
13 This is done by, one, form subcommittees, transmit
14 specific recommendations for improving the program. And
15 that's exactly what these are.

16 And, again, these forms -- And if we can get DEQ
17 reporting the data that we're asking for, then -- These
18 forms were done to actually provide a much easier and
19 quicker way to do it because it is all stuff that they
20 have right in the database including how to query it. But
21 we have seen the backlog go from -- And this is just SAF.
22 We haven't even looked at corrective action documents.
23 That it went from 500 to 1,000. And that obviously is --
24 I mean, we need to look at the overall effectiveness of
25 that program. And that's what our mandate is. That's one

1 of our mandates.

2 MR. CARDON: Mr. Chairman, would there be
3 any possibility of going ahead and looking specifically at
4 the recommendation?

5 CHAIRMAN O'HARA: I think I would like to
6 hear them, and then we can decide how to act on them.
7 Since the technical subcommittee did have a meeting and
8 they are the subcommittee, we ought to at least defer to
9 Hal and let him bring the recommendation forward, how we
10 act on it and decide.

11 MS. JAMISON: Mr. Chairman, if we need eight
12 people for a quorum, we don't have a quorum.

13 CHAIRMAN O'HARA: Seven.

14 MS. JAMISON: Is it seven?

15 CHAIRMAN O'HARA: It doesn't necessarily
16 mean we are going to vote on it. I think there is a lot
17 here. In my personal opinion, it needs some digesting.
18 And I would like to have more than seven of us here. I
19 would like to have the whole committee. And he had one
20 meeting on Monday. In two days we are going to vote on
21 some very far-reaching issues, not to disagree or agree
22 with them. I just think it needs more digestion,
23 personally. But I am open for whatever the committee
24 decides. I would like to hear at least what his
25 recommendations were.

1 Roger.

2 MR. BEAL: If -- You said the system was
3 broken, and I see recommendations to fix something. But
4 could you define what it is that's broken?

5 MR. GILL: I think during the process, I
6 could point out a few of them.

7 MR. BEAL: I understand that. I think what
8 I'm asking for is -- I sense that you are trying to define
9 the broken process by making recommendations to fix it.
10 And in order to even have a way for me to evaluate your
11 recommendations, I need to understand the process that's
12 broken. I am just missing a focus here.

13 MR. CARDON: Mr. Chairman, I would think
14 that would be totally reasonable. And that would
15 definitely be -- that was definitely part of the
16 discussion in the technical subcommittee. And it could
17 certainly be part of the discussion as we go through the
18 recommendation to understand what isn't happening so the
19 recommendation can be better understood.

20 CHAIRMAN O'HARA: I have a question real
21 quick. Obviously, the Department made a reorganization
22 recently. I'm sure they have different goals or new
23 benchmarks. By having this technical subcommittee and
24 presenting these recommendations, are we allowing them the
25 opportunity to make their own changes or are we just

1 saying we want to do this despite your reorganization?

2 MR. GILL: I don't know what they are doing.

3 CHAIRMAN O'HARA: Do we want to give them
4 the opportunity to make changes on their own, or do we
5 want to at this point say it is so broken that you can't
6 fix it. Is that what you are saying?

7 MR. GILL: I think there are some
8 suggestions in here. We are on the side of the program
9 that's affected most by the problems.

10 CHAIRMAN O'HARA: "We" being?

11 MR. GILL: Owner-operators, consultants,
12 stakeholders. And that was the reason for bringing the
13 meeting together, is for that side to discuss these issues
14 and look at the fixes for these problems. And so as far
15 as -- We don't know what their restructuring is.

16 CHAIRMAN O'HARA: Didn't we go to the
17 director, we or a group go to the director, and say we
18 wanted to get this all under one roof? And that was the
19 recommendation and solution at that point. And now it's
20 happened.

21 MR. GILL: I don't have a problem with that.

22 CHAIRMAN O'HARA: That resolution, we
23 haven't seen results. And now are we saying it's --

24 MR. GILL: Granted, they will need to have
25 time to show results, which is addressed in here. But we

1 just want to make sure that the new program is not making
2 the same mistake as the old program.

3 CHAIRMAN O'HARA: Mr. Cardon.

4 MR. CARDON: It would seem that the
5 recommendations of the subcommittee simply are long-term,
6 good, basic, fundamental guidelines that the subcommittee
7 would like to see implemented no matter what changes are
8 made in the Department. It's not telling the Department
9 what to do. It's a statement of what the Commission would
10 like to see as policy.

11 CHAIRMAN O'HARA: Let's listen to the
12 recommendations, if you want, Hal.

13 MR. GILL: I'll try to be as brief as
14 possible. Basically, 1A was something that came out of
15 the discussions for the last year plus. I don't know how
16 many times at this Policy Commission we've had discussion
17 on policy and subsequent policy. It was, I think, in the
18 last -- actually, about two meetings ago individuals on
19 the Policy Commission pointed out that they -- that we
20 really needed to have something to vote on. I mean, the
21 discussions on policy were just going on and on and on and
22 we weren't getting anywhere because too many of them were,
23 according to DEQ, in appeal and so we could not discuss
24 those individual things and on and on.

25 So I was just thinking about that and trying to

1 figure out how to bring something to the Policy Commission
2 that can be voted on. So I brought up this general idea
3 at the technical subcommittee meeting. It was discussed.
4 A number of points were added to it. Basically, what it
5 entails is that at the end of every meeting that is held
6 between DEQ and the stakeholders, whether it is corrective
7 action, whether it is SAF, and internal decisions are made
8 within DEQ on determinations or decisions, we need to
9 figure out a way to get those determinations, if it is
10 determined that they affect a wide swath of the regulated
11 public, to the Policy Commission to look at.

12 And the idea that occurred to me at first was
13 just that at the end of the meetings, we always have
14 meeting notes. The individuals involved in those meetings
15 can discuss those meeting notes and determine if there is
16 anything here that we as the group in that meeting, both
17 DEQ and the owner-operator, consultants, representatives,
18 believe that this is an issue that isn't affecting just
19 us. This is not a site-specific issue. This is a
20 determination, the decision that's being made, and we can
21 see it is going to affect all others.

22 This happens numerous times. The only way it
23 gets around is the consultants pass it around. And we are
24 trying to figure out a way to get that to the Policy
25 Commission to be looked at, for the entire group to look

1 at, to get input from everyone to see if this is truly a
2 determination that is affecting all parties or can affect
3 all parties and have an opportunity to get it out to the
4 public because right now they are not getting out to the
5 public.

6 CHAIRMAN O'HARA: That's the log?

7 MR. GILL: This is just -- this is not
8 specific to any policy or any determination or any
9 decision. But it's just a way that I could see and with
10 input from a lot of people at this meeting to bring these
11 determinations or decisions to the Policy Commission and
12 ultimately get them out to the public. That's just --
13 There is a lot.

14 CHAIRMAN O'HARA: That's basically a
15 decision log.

16 MR. GILL: Exactly. When I heard several
17 meetings ago discussion on the decision log that was kept
18 by the SAF and then found out that it was gone, that it
19 wasn't being used anymore, that's what sparked the idea
20 because that's where we are having problems. These are
21 decisions and determinations that are being made.
22 Sometimes they are site specific. That can be determined
23 at that meeting, this only affects this site for whatever
24 reason. If it is not, we can see it is going -- and the
25 consultants and the owner-operators can make that

1 determination with the DEQ in that meeting that it needs
2 to come forward.

3 CHAIRMAN O'HARA: Any comments on 1?

4 MR. CARDON: Mr. Chairman, would it be
5 helpful to other members of the committee to simply read
6 these items one at a time and then stop? And then maybe
7 some member of the Commission could be asked to read one
8 item at a time?

9 CHAIRMAN O'HARA: It would be quicker, keep
10 to what's on the paper.

11 You want to read those, Item No. 1, your first
12 recommendation.

13 MR. BINGHAM: Can I ask a question of
14 Mr. Gill?

15 CHAIRMAN O'HARA: Sure.

16 MR. BINGHAM: With respect to the meeting
17 notes, are you asking this body to make a decision
18 regarding the outcome of the meeting or just the basis of
19 the decision? And the reason I'm asking is: How does the
20 guidance document, which we went through to discuss the
21 policies that cover and impact everyone, how does that fit
22 into this? And I'll add on before you answer.

23 The fact that we have the ability to raise new
24 issues that the guidance document does not cover -- I
25 mean, it just seems we're throwing a whole bunch of darts

1 at the exact same problem when I thought we spent two-plus
2 years trying to address these same issues.

3 CHAIRMAN O'HARA: This sounds like a SAF
4 determination log, right?

5 MR. GILL: It is both.

6 MR. BINGHAM: I see the section up there.

7 MR. GILL: To answer Ian's question, maybe I
8 wasn't clear. We don't want the decision -- The
9 determination that's coming out of this has nothing to do
10 with that specific site. If something, a new decision or
11 determination, we're going -- we're requiring five-gallon
12 water wells from now on, two up gradient and one down
13 gradient, this is new. Is there any particular reason
14 that has to be done in this site? No. That's what we
15 would like from now on. And that's just -- it's a
16 meaningless example. And I chose it that way so it would
17 be.

18 If it's in that meeting decided and it has
19 nothing to do with that site, a determination of how that
20 meeting is coming out, but from this point on DEQ would
21 like to do this and it is determined this is something
22 brand new, we haven't heard of this before, and it isn't
23 already in the guidance document, that's the whole point.

24 We were trying to figure out two or three
25 meetings ago how to bring these issues forward because we

1 are going to revisit the guidance document every six
2 months, if need be. This was a way to get the issues on
3 the table. And it has nothing to do with a determination
4 for that appeal, for that -- whatever it happens to be.
5 It is only a decision that is made or determination that's
6 made in that meeting that a red flag goes off to the
7 owner-operator or consultant, wait a minute, this is
8 something that's brand new to us. We have never seen this
9 before. And they think that it is not affected by the
10 entire -- it doesn't -- it affects the entire regulated
11 public.

12 MS. JAMISON: Question.

13 CHAIRMAN O'HARA: Ms. Jamison.

14 MS. JAMISON: Mr. Gill, what do you mean by
15 "applicant notification requests"? It says, "Provide a
16 list of applicant notification requests and the frequency
17 of these requests."

18 MR. GILL: Basically, that is the -- that is
19 the decision log. I mean, when a decision is made, it is
20 sent out to the owner-operator to let them know a decision
21 has been made. That's the first thing -- the AN letter is
22 what comes to the owner-operator saying the particular
23 decision has been made.

24 MS. JAMISON: Mr. Chairman, if I could make
25 a comment. This No. 1, letter A recommendation, it seems

1 to me, is exactly the type of thing that we are not
2 mandated to do. Documenting determinations made in
3 informal appeal meetings and settlement conferences
4 directly impacts case-by-case determinations. Settlement
5 conferences relate to particular sites. Informal appeal
6 meetings relate to particular sites and particular
7 circumstances. And as far as the Department documenting
8 its internal discussions, I don't think we have any basis
9 for asking.

10 MR. GILL: I don't want a copy of the
11 determination. I want a list made of decision
12 determinations that from this particular meeting affect
13 all owner-operators. Another example, in the last year --
14 or actually two years ago, we were having real problems
15 with the SAF program because we could not turn in
16 applications during site characterization until the site
17 characterization report was completed because the site
18 characterization report is where you document all the
19 information for that entire site characterization.

20 That site characterization could go on for a
21 year. But the way that the pre-approval work plan was
22 written, the way that the SAF at that time was operating,
23 if we submit an application, they would say, well, where
24 is the site characterization report? There is no
25 documentation this work has been completed that you are

1 submitting an application for for reimbursement of direct
2 pay from. So when the CRU came in and they actually --
3 Phil McNeely put forth a new policy that said basically if
4 you do a new phase of work, you install a number of
5 borings or wells, if you can provide the boring logs or
6 the well completion diagrams, proof that this work was
7 done, provide that with your application, then we will --
8 we can pay that. You don't have to wait until the report
9 is done. A year and a half ago, all of a sudden we were
10 getting the same requests, we need to see the site
11 characterization reports.

12 These are changes that in a particular meeting
13 where you go in there for an appeal, you say, Wait a
14 minute. Why am I being denied? This is why. That's a
15 new determination that affects across the board. I would
16 like to get that out to everybody because the only way
17 that we found out about that was going around the
18 consultant meetings. And that's something -- these are
19 huge changes, affects everybody.

20 CHAIRMAN O'HARA: Mr. Cardon.

21 MR. CARDON: Mr. Chairman, there was general
22 consensus in the technical subcommittee that there are
23 specific points in the application process and the
24 processing of an application that -- where policies and
25 procedures are applied that do make a difference to the

1 smooth operation of the program. This is nothing more or
2 less than an attempt to identify a point in the process
3 that where new policies are being developed can come
4 before this Commission.

5 The alternative to this kind of approach is to
6 say just any individual that wants to bring a policy
7 before the Commission can bring a policy before the
8 Commission. That doesn't make -- We should have that
9 freedom. But as far as a basic approach, that probably
10 doesn't make a great deal of sense as to how this
11 Commission should operate. So this is an attempt to
12 simply identify points in the process where new policies
13 can be brought to the Commission for review. That's all
14 this is.

15 CHAIRMAN O'HARA: They are general policies.
16 They are not specific policies on one particular case.

17 MR. GILL: It is not a policy. It was a
18 determination, decision that was made in a meeting log.

19 CHAIRMAN O'HARA: I am going back to they
20 had a decision log originally. That was a SAF decision
21 log. It had almost over 100 decisions in it. They only
22 were formalized when it was something that applied to
23 everybody. For instance, tank pulls are no longer
24 eligible, and that was the decision. Or we pay X number
25 of dollars for this. There is certain policies that apply

1 to everybody that, I think, we want to document, if I
2 understand Hal correctly, if that's the policy that's
3 being created. It is a log of those policy decisions.
4 Not in this particular case, Mr. X did X, Y, and Z so we
5 gave him money. Is that what I understand?

6 MR. GILL: Yeah.

7 CHAIRMAN O'HARA: It is not a list of every
8 decision. It is a list of decisions that apply to
9 everybody.

10 MR. GILL: The meeting notes that are made
11 at the end of the meeting, the decisions that were -- the
12 determinations we are talking about are ones that are
13 already done. And it is not under appeal anymore. This
14 is a determination decision made by and between the DEQ
15 and the owner-operator and their representative and it is
16 agreed on. That's when those meeting notes are signed.
17 Basically, it is a done deal.

18 And if this is something that is brand new to
19 that owner-operator and consultant, we have been asking
20 for a year half to get these in front. Your example, the
21 reason that didn't work is when the individuals bring
22 their problem in front, it is under appeal so it can't be
23 discussed. So once it is on those meeting notes and it
24 has been agreed, okay, we will do that, now it's not under
25 appeal anymore. And if it is something different,

1 that's -- And, again, this is something to be worked on.

2 But I was asked to try to bring something to the
3 Policy Commission we could vote on rather than just keep
4 complaining about policies and subsequent policies. And
5 it looked like we could not get around the point that
6 there was -- that somewhere in the world it was under
7 appeal.

8 CHAIRMAN O'HARA: Mr. Cardon.

9 MR. CARDON: There would, perhaps, be other
10 points in the process that could be specifically
11 identified that would facilitate bringing new procedures
12 and policies forward. This was one specific
13 recommendation, and there could be other recommendations.

14 This does not have to do with trying to rework a
15 specific case. This has to do with the policies and
16 procedures -- new policies and procedures that are
17 implemented by the Department. And it seems --
18 Mr. Chairman, it seems almost self-evident that there
19 should be some procedure identified that would bring
20 policies to this Commission. Otherwise, why have the
21 Commission?

22 But could we -- I would like as a member of the
23 Commission, I would like to go ahead and read through
24 this. We haven't read one of these things yet. I would
25 like to read through this.

1 CHAIRMAN O'HARA: Maybe you ought to do the
2 reading.

3 MR. CARDON: Be happy to do that. Where
4 would you like to begin, No. 2?

5 CHAIRMAN O'HARA: My recommendation, let's
6 go through them, read them, make everyone familiar with
7 this including everyone in the public. It is a lot to
8 digest. I doubt we can get everybody comfortable. I
9 would like to have every Commission member here for a vote
10 since it is so important. We may even recommend having
11 another technical subcommittee, and maybe DEQ can attend
12 and come up with a document. We'll vote on it at the next
13 meeting. I would like to have it introduced and read so
14 everyone is familiar with what we are talking about. Go
15 ahead.

16 MR. CARDON: Where would you like to begin?

17 CHAIRMAN O'HARA: Start with No. 1.

18 MR. CARDON: Recommend that the SAF and UST
19 corrective action sections, USTCAS, develop a
20 determination log to document all decisions made by the
21 Department that affect owner-operators or applicants.
22 This log will document determinations or decisions made in
23 such meetings as informal appeal meetings and settlement
24 conferences or internal discussions within the Department.
25 Provide a list of applicant notification requests and the

1 frequency of these requests.

2 CHAIRMAN O'HARA: Two.

3 MR. CARDON: Number 2. Recommend that the
4 SAF and USTCAS provide the determination log to the
5 technical subcommittee for decisions and ultimately to the
6 UST Policy Commission for review, discussion, and a vote.

7 Bullet, the ADEQ will provide the determination
8 log on a monthly basis to the UST Policy Commission.

9 Bullet, the UST Policy Commission will provide a
10 vehicle for the regulated public to provide input to the
11 determination log.

12 Bullet, the ADEQ will provide the determinations
13 to the regulated public in the form of a newsletter or
14 other mass-communication format.

15 CHAIRMAN O'HARA: Any comments?

16 Go ahead.

17 MR. CARDON: B, discuss the role and
18 responsibility of the SAF program section and the USTCAS
19 in the processing of pre-approval, direct pay, and
20 reimbursement applications.

21 One, recommend that the SAF section adhere to
22 the original design approved by the ADEQ and the state
23 legislature for hydrologist position experience
24 requirements for the new technical review unit, TRU, which
25 was two to three years of field experience in soil and

1 groundwater corrective action projects and at least an
2 earth science degree.

3 You want me to stop after these and see if there
4 is any question on each one?

5 CHAIRMAN O'HARA: Go ahead.

6 MR. CARDON: Two, recommend that the SAF
7 return to the original UST claims review unit, CRU,
8 philosophy, which was to find the legal means to pay for
9 the corrective action work that was reasonable, necessary,
10 actually performed, and eligible instead of the current
11 philosophy to deny as many costs for work performed as
12 possible.

13 Number 3, recommend that the SAF program develop
14 a communication regimen to provide for better upfront
15 communication between SAF application reviewers and
16 clients to move the review process forward more rapidly.

17 Number 4, recommend that the SAF section revisit
18 the competency exam concept to develop a baseline
19 technical competency for current and future employees of
20 the TRU unit.

21 Bullet, bring a test forward to the technical
22 subcommittee for help in test design, redesign.

23 Bullet, plan seminars hosted by different
24 consultants, ASU personnel, and other experts in UST
25 investigation and remediation to increase the technical

1 expertise of TRU and ADEQ corrective action section
2 personnel.

3 Do you want to have any discussion?

4 CHAIRMAN O'HARA: Probably not today. Let's
5 do it for a subcommittee meeting.

6 MR. CARDON: C, evaluation of impacts of SAF
7 processes and staff on applications within SAF program.

8 Finding: The problems with the SAF and CRU
9 sections that have resulted in a backlog of more than
10 1,000 applications are not the result of a process or
11 database problem but are the result of personnel
12 experience problems and management philosophy. See
13 graphs.

14 MS. JAMISON: Mr. Chairman, I don't find a
15 recommendation in that one.

16 MR. GILL: It was a finding.

17 MR. CARDON: D, SAF application status.
18 Recommend that the SAF section provide monthly reports to
19 the UST Policy Commission using the provided format.

20 E, SAF application reporting.

21 Findings: Internal performance standards when
22 CRU initially developed.

23 Bullet, eight to ten applications reviewed per
24 claim reviewer per week.

25 Bullet, CRU actually had time to review SCRs and

1 CAPs for soil-only sites.

2 Bullet, if an individual reviewer was reviewing
3 less than eight to ten applications per week, then
4 personnel met with CRU management to discuss problems and
5 develop an action plan to increase productivity. The
6 technical subcommittee requests from the Department
7 internal performance standards for the current program.

8 Bullet, how is the ADEQ SAF section documenting
9 performance standards?

10 Bullet, what is the ADEQ SAF section doing if
11 standards are not met?

12 One, recommend ADEQ SAF section continue using
13 existing standards established by the CRU for number of
14 applications reviewed per month.

15 Two, if these standards cannot be met, then the
16 subcommittee recommends that the Department develop a new
17 contract to outsource application review until backlog is
18 reduced to manageable levels.

19 Three, recommend that the Department evaluate
20 the 21 percent administrative cap and determine how
21 personnel can be reassigned to TRU.

22 Four, recommend UST Policy Commission establish
23 a budget subcommittee to review expenditures of SAF monies
24 (modeled after WQARF advisory committee budget
25 subcommittee). The budget committee shall evaluate such

1 issues as the cost-effectiveness of the appeals process.

2 Bullet, total cost spent on appeals.

3 Bullet, what is the average cost per appeal?

4 Bullet, how do total costs spent on appeals
5 correlate with total SAF cost savings from denied costs?

6 (Brian Beck presentation.)

7 Five, the subcommittee recommends that the
8 ultimate performance standards should be:

9 Bullet, 60-day processing of applications.

10 Bullet, no more than 200 active claims in-house
11 at any time.

12 Bullet, maximum of a 10 percent appeal rate.

13 F, 2003 cost-ceilings survey presentation to the
14 UST Policy Commission. ADEQ please provide the following
15 information to the UST Policy Commission:

16 One, identify the process utilized to date by
17 the ADEQ in development of the proposed cost-ceiling
18 survey.

19 Two, identify deviations from process utilized
20 during establishment of the 2000 cost ceilings.

21 Three, identify process of public comment for
22 the proposed cost-ceiling survey.

23 Four, development of schedule for completion of
24 the proposed cost-ceilings survey for review by the UST
25 Policy Commission.

1 Technical subcommittee recommends that the ADEQ
2 SAF section not send out the survey until reviewed by the
3 technical subcommittee and approved by the UST Policy
4 Commission.

5 G, identify the cost analysis method proposed by
6 the ADEQ to determine the dollar amount to be published
7 for cost ceilings. ADEQ please provide the following
8 information for the UST Policy Commission:

9 One, identify deviations from process utilized
10 during the establishment of the 2000 cost ceilings.

11 Two, identify the effect that changes in
12 development of task-based cost ceilings have on dollar
13 amount to be published.

14 Three, identify process of public comment for
15 the proposed cost-analysis method.

16 Four, development of schedule for completion of
17 proposed cost-analysis method to review by the UST Policy
18 Commission.

19 Technical subcommittee recommends that the ADEQ
20 SAF section provide the cost analysis method to the
21 technical subcommittee for discussion and to the UST
22 Policy Commission for approval.

23 H, State Assurance Fund claim process. Please
24 provide the UST Policy Commission the ADEQ written
25 determination related to the current request for copies of

1 the owner-operator and consultant contract.

2 One, apparent implementation of a substantive
3 policy in the request for copies of contracts for State
4 Assurance Fund reimbursement claims.

5 Two, require copy of contract versus
6 owner-operator contract date certification.

7 Three, explain how the applicant can document --
8 can document the terms and conditions of a verbal contract
9 and why it is necessary.

10 Three, provide the reason for the new
11 interpretation of language that has been in existence
12 since 1996.

13 I, development of State Assurance Fund rules and
14 guidance document.

15 One, recommend ADEQ commit to a date for
16 submittal of the proposed SAF rules to the UST Policy
17 Commission for review.

18 Two, recommend that the ADEQ commit to a date
19 for technical subcommittee meetings to begin review of the
20 proposed SAF rule guidance document.

21 Two, underground storage tank corrective action
22 section.

23 A, UST corrective action section document
24 status. Recommend that the UST corrective action section
25 provide monthly reports to the UST Policy Commission

1 during the provided format -- using, excuse me, the
2 provided format.

3 CHAIRMAN O'HARA: Any comments from members
4 of the Commission? Mr. Cardon.

5 MR. CARDON: I would like to make a
6 particular note. All of these points are extremely
7 important and could possibly be massaged and take some
8 different format. But in essence, they are all extremely
9 important.

10 I would like to call the Commission's attention
11 to one particular point. There has been a remarkable lack
12 on the part of this Commission of any budget-type review
13 of the 21 percent overhead allocation as authorized by the
14 legislature. It was mentioned in the technical
15 subcommittee meeting that there may be possible extreme
16 misuse of that 21 percent, that the Commission would be
17 well-advised to instruct the financial subcommittee or
18 perhaps give particular charge to the financial
19 subcommittee to specifically address that budget item, the
20 specific application of the 21 percent, how it's being
21 spent, and what is being done with those funds.

22 It became -- it became apparent in the dialogue
23 that occurred in the technical subcommittee that if all of
24 that money were spent specifically on the UST program as
25 the legislature intended, that there would be lots more

1 effort on the UST program.

2 CHAIRMAN O'HARA: Say that again. If the
3 21 percent --

4 MR. CARDON: If the 21 percent allocation
5 were all spent for personnel working on the UST program,
6 that there would be a lot more effort, there would be a
7 lot more bodies working on the UST program.

8 CHAIRMAN O'HARA: So the money may not all
9 be going to the UST program is what you are saying?

10 MR. CARDON: Correct.

11 CHAIRMAN O'HARA: Good idea. We ought to
12 take a look at that. That's part of our mandates, is to
13 look at the appropriate use of the monies.

14 Any other comments on the recommendations from
15 the committee members?

16 Any comments from members of the public?

17 MR. MERRILL: Fred Merrill, for the record.
18 I was in that technical subcommittee also. And several
19 people asked me why the Department chose not to appear at
20 that meeting. And I had no reason to give them, no
21 answer. And I think that they would like to know why the
22 Department -- given the scope of the agenda like
23 Ms. Jamison said, why they chose not to appear.

24 CHAIRMAN O'HARA: Any other comments from
25 the public?

1 Any suggestions? We can put this to a vote.

2 Like I said earlier, I would prefer to have more members
3 of the Commission. I would also like the opportunity -- I
4 don't know how you feel, Hal -- but possibly hold another
5 subcommittee meeting just to finalize this. Give DEQ the
6 opportunity, if they so desire, to attend because I think
7 it's a much better product if you have cooperation on both
8 sides and it is more of a consensus document.

9 But I would say from a Commission standpoint,
10 that if we have a subcommittee, my philosophy is to defer
11 to the subcommittee. If people want to participate in the
12 creation of this document, to attend that subcommittee
13 meeting. Otherwise, it is kind of difficult to have a
14 subcommittee, go through all the detail, and then bring
15 forth and then start redebating all the issues again on
16 the Commission level.

17 MR. GILL: I have no problem. As a matter
18 of fact -- And I probably should have made it clear when I
19 sent out the original agenda that I did not expect to
20 finish that in one day.

21 CHAIRMAN O'HARA: That is a lot of
22 information. What I'm saying, maybe give people another
23 opportunity to make it.

24 MR. GILL: We got further than I expected.
25 We didn't get into the very last few points. We didn't

1 get into the SAF issues because those were all going to be
2 questions, that's the way it's presented here, to SAF. We
3 didn't have the answers, so we didn't get into that. And
4 we only provided the one recommendation for -- The second
5 half of the agenda was for the corrective action section.
6 And so we were still planning on having at minimum another
7 meeting for the corrective action section.

8 But now that we have some data on the SAF, the
9 cost-ceiling issues, we can have one that we could include
10 that for the last few items on that first part of the
11 agenda.

12 CHAIRMAN O'HARA: Other comments?

13 MR. BEAL: Yeah. I guess I'm going to go
14 back to my original point here. And I think you've made
15 recommendations to solve problems that are not well
16 defined. I just sort of wonder if the technical review --
17 As a representative of the consultants, I know that's why
18 you bring this forward, if you could summarize the reasons
19 for doing it. For example, like, these determinations
20 aren't made to the general public. I am a one-shot
21 person. I'll never know if there is another determination
22 when it comes to my group. As consultants, you may see
23 several inconsistent determinations or determinations that
24 would have helped you plan a course of action you don't
25 know about.

1 And then as a Policy Commission member, I would
2 be glad to say, Come up with a solution for that. You
3 have alluded to education and experience and
4 qualifications of personnel in the Department maybe not
5 being able to understand or carry through on their own
6 with a determination. If that's, in fact, the case, then,
7 I wish you would say so; and then we can understand the
8 recommendation to investigate. A lack of productivity, it
9 is not going out fast enough for whatever reason. I think
10 if all these things, if they are concerns, I'll use the
11 term, consultants have, perhaps the DEQ management needs
12 to know that they are there. It is possible that they
13 don't.

14 Time for processing rates, are the applications
15 different? Are there other reasons that go on? In other
16 words, those are just some of the things I tried to back
17 out. But I would like them to be defined in that so I
18 would know for a fact that's why you are doing it.

19 Certainly -- I certainly don't want to have any
20 part in running ADEQ. And some of the requests coming to
21 the Commission here almost put you in the management type
22 of condition. I think that we've got a lot of competent
23 people in the room. If we just know where their
24 frustrations are, then they can attend your meeting to
25 come up with a way not to have them anymore. I would sure

1 like them to be stated.

2 MR. GILL: I agree. I probably should have
3 put it down, this is perceived or the actual problem and
4 here is the recommendations from the committee.

5 MR. BEAL: We might take a list of perceived
6 problems and then direct to solve them there. Maybe some
7 of them are financial and can go to the financial
8 subcommittee as solutions in that light. I know we've got
9 good people every place. It is just trying to make it
10 work more efficiently.

11 CHAIRMAN O'HARA: Mr. Cardon.

12 MR. CARDON: Once again, I think Roger's
13 point is absolutely well-taken. Given the magnitude and
14 the scope of the technical subcommittee's recommendations,
15 it does seem that it would be appropriate to meet again
16 since it would appear that there is not going to be a vote
17 taken today.

18 Would it be possible to have another technical
19 subcommittee meeting and -- on a timely basis and in such
20 a fashion, perhaps early on, where all the parties could
21 be represented and where this could be brought to a vote
22 at our next meeting so it wouldn't be a thing that slides
23 forever?

24 CHAIRMAN O'HARA: That's my recommendation
25 for the next meeting.

1 MR. CARDON: And I would recommend that
2 because of the scope of the technical subcommittee's work
3 and parties involved, it would really be a good thing to
4 have as many members of the Commission present as
5 possible. I don't know what notification process would
6 need to be done in order to allow that to occur. But if
7 we could have every member of the Commission at the
8 technical subcommittee next meeting, it would be
9 beneficial.

10 MS. JAMISON: Mr. Chairman, who are the
11 members of the technical subcommittee?

12 CHAIRMAN O'HARA: Anyone on the Commission
13 can be a member of the subcommittee.

14 MS. JAMISON: There aren't specifically
15 designated --

16 CHAIRMAN O'HARA: There is just a chairman.
17 It is really more of an informal working group. It goes
18 through a little more time, a little more detail into the
19 issues so to bring it forward to the full committee. Most
20 of the issues and concerns have been hashed out at the
21 subcommittee.

22 MR. CARDON: Mr. Chairman, perhaps there
23 could be particular attention given to making a meeting
24 time such that all members of the Commission that would
25 care to could attend. There may be some discussion on

that particular point before we end today, when a meeting could be held.

CHAIRMAN O'HARA: It is up to our chairman. If he can kind of -- you may want to send us out preferable dates, and we can respond back to you.

MR. GILL: I'll send out an e-mail as soon as I get back because I think we probably will need at least two more meetings. And I'll somehow intersperse those between cost-ceiling meetings. Within the next week to week and a half, I would think we would need the first one before going -- to get through it and making any recommendations by next meeting because I think it will probably take two. I know we couldn't go right through it.

CHAIRMAN O'HARA: Any other comments?

Ms. Foster.

MS. FOSTER: Mr. Chairman, we've only heard one side of the story during this whole meeting. I would like to ask Ian, how many unreviewed applications were you prepared to report on this month?

MR. BINGHAM: I will turn it over to
Ms. Navarrete.

MS. FOSTER: Is it in the thousands like it's portrayed here in this document?

MS. NAVARRETE: This is as of the end of

1 August.

2 CHAIRMAN O'HARA: I'm sorry. Theresa, where
3 was it portrayed as thousands?

4 MS. FOSTER: There's no page numbers on
5 here. The top of the second page, it talks about the
6 finding that based on the graph, there are more than a
7 thousand applications.

8 CHAIRMAN O'HARA: More than a thousand,
9 okay.

10 MS. FOSTER: In looking at this document,
11 which number represents the number of unreviewed
12 applications? Is that the 846?

13 MS. NAVARRETE: Yes, it does.

14 MS. FOSTER: And the 68 and the 135?

15 MS. NAVARRETE: Determinations have not been
16 made. That doesn't mean that they are not under review.

17 MS. FOSTER: So we are over a thousand,
18 then?

19 MS. NAVARRETE: Without determinations, yes.

20 MR. CARDON: Mr. Chairman, comment on that
21 point. I guess, members of the Commission, it was only
22 Hal and I that were at the technical subcommittee. But
23 that's an interesting point that Theresa raises because it
24 did seem in the technical subcommittee that there was a
25 question about definition. And some of the handouts that

1 were given to you today were a straightforward attempt to
2 try to address the question of definition so that when we
3 discuss this matter, that everybody is on the same page.
4 That is part of the technical subcommittee's
5 recommendation.

6 CHAIRMAN O'HARA: Any other comments on this
7 issue? It will be on our agenda for the next meeting.

8 Hal, do you have any other comments on the
9 technical subcommittee, Agenda Item 4?

10 MR. GILL: Well, that was A and B.

11 CHAIRMAN O'HARA: Any other comments from
12 the public?

13 We'll take a break for about ten minutes.

14 MR. CARDON: Before breaking, do we have to
15 do anything special to note that there will be a vote
16 taken on this at the next meeting?

17 CHAIRMAN O'HARA: We don't need to
18 procedurally because it is on our agenda. We will have a
19 vote next meeting.

20 Thanks. Be back in ten minutes.

21 (Whereupon, a recess was taken from 10:43
22 o'clock a.m. to 10:57 o'clock a.m.)

23 CHAIRMAN O'HARA: I'm going to call this
24 meeting back to order, please. Thank you for coming back.

25 Move on to Item 5. It deals with the corrective

1 action rules and the guidance document outreach. And I
2 think just from looking at the minutes, we just want to
3 get a general update as to what's going on with the
4 corrective action rules and the guidance document outreach
5 attempt.

6 If you would go through that, Ian, if you would.

7 MR. BINGHAM: Actually, each Commission
8 member has a copy of the final guidance document. There
9 is a training scheduled tomorrow, South Mountain Community
10 College, on the guidance document and rule to the public.
11 And we'll be holding evening courses, one here in Phoenix,
12 in Tucson, and Flagstaff, over the next week and a half.
13 Also, those are going to be evening sessions giving the
14 owner-operators an opportunity to be able to attend those.
15 I think those are 7:00 to 9:00, those evening courses?

16 MR. DROSENDAHL: The evening courses? Yeah.

17 MS. JAMISON: Mr. Chairman, Ian, do you know
18 if those are listed on the Web site, the DEQ Web site?

19 MR. BINGHAM: The training sessions? Yes.
20 They have been up there a couple weeks now.

21 CHAIRMAN O'HARA: Great. And those training
22 sessions will address some of the questions that have come
23 up under Item 5?

24 MR. BINGHAM: Yeah. We anticipate there
25 will probably be more training. We will see in the first

1 round whether we need something a month down the road.

2 I'm envisioning probably within the next six months, once
3 the rules are up, people are using them, they will have a
4 better feel. So the training will actually be more
5 interactive down the road. So I would anticipate for the
6 most part more DEQ talking and answering kind of general
7 questions. And down the road, as the need arises, we'll
8 continue the outreach and education on this package.

9 CHAIRMAN O'HARA: Any comments from
10 Commission members?

11 Members of the public, any comments on the
12 corrective action rules and guidance document outreach?
13 Please attend those meetings. Great.

14 This is mislabeled. Item No. 6 should be
15 presentation, discussion of ADEQ policy regarding
16 volunteers not being eligible for reimbursement of the
17 application and preparation costs. Is anyone prepared to
18 discuss that policy?

19 MS. NAVARRETE: That's a statutory
20 requirement. We have no statutory authority to pay for
21 the preparation costs.

22 CHAIRMAN O'HARA: That's more policy. It is
23 interpretation.

24 MS. NAVARRETE: Yes, it is in statute. It
25 is in law. The preparation costs can be credited for

1 operators and owners, and that's a credit to their direct
2 pay. There is no statutory authority for us to pay
3 volunteers.

4 CHAIRMAN O'HARA: No co-pay to take it out
5 of. I saw some discussion in the minutes that you do have
6 the right to go after the 10 percent from the original --
7 or actual RP, the 10 percent.

8 MS. NAVARRETE: If we can find the owner.

9 CHAIRMAN O'HARA: Any discussion from the
10 committee members on that topic?

11 We will open it up to the public. Mr. Beck.

12 MR. BECK: Yeah. We find that there is a
13 pretty good conflict in what they just stated. Under,
14 yes, 49-1052(a)(7), it does say that the costs incurred
15 for that should be credited towards the owner-operators'
16 co-pay. But under 49-1052(i), it basically says a person
17 who undertakes and meets the requirement who is not an
18 owner or operator is eligible for 100 percent coverage.

19 The SAF is paying for all other costs. How come
20 they are not paying volunteers for getting costs for -- or
21 recovery of costs for preparation of DEQ-required
22 documentation? Statutory says the UST volunteer is
23 eligible for 100 percent coverage. And further in the
24 regulations, it says that if there are other costs in
25 here, that the ADEQ is supposed to seek it against the

1 owner or operator.

2 CHAIRMAN O'HARA: Any comments from
3 committee members?

4 MR. GILL: Just when is 100 percent
5 100 percent?

6 CHAIRMAN O'HARA: It sounds to me like -- I
7 am not a lawyer -- you may have conflicting statutes. One
8 says 100 percent. One says you can only get reimbursed
9 from the co-pay, which there is no co-pay; so it doesn't
10 make sense. It seems like it is a problem. Unless I'm
11 mistaken, there is general agreement that they should have
12 the same rights as -- volunteers should have the same
13 rights as owner-operators. So as a Commission, if that's
14 true, should we make recommendations to the legislature to
15 fix the statutes?

16 MR. GILL: An extra point, when it was even
17 being written, volunteers don't have to do anything. So
18 it is an incentive to get them to clean up the sites that
19 they do not have to clean up. It would be the state.
20 That was the whole point of what was written, is let's try
21 to give them an incentive. I think it does need to be
22 addressed. It does sound to me it is a --

23 CHAIRMAN O'HARA: It is a disincentive in
24 order to have them pay for that.

25 MR. GILL: You are looking at a 250,000,

1 \$500,000 cleanup. That's a lot of money, 10 percent.

2 CHAIRMAN O'HARA: Mr. Cardon.

3 MR. GILL: And the applications.

4 MR. BINGHAM: Applications are 10 percent of
5 your cleanup?

6 MR. GILL: No. That's a lot of applications
7 at 900 a pop. Goes up real fast.

8 MR. CARDON: Do we understand that this
9 preparation expense is not -- the Department has made a
10 determination that this preparation expense is not
11 covered? That specific determination has been made?

12 CHAIRMAN O'HARA: Yes. Based on their
13 interpretation of statute, because the statute says
14 application preparation costs must come from the co-pay as
15 a credit to the co-pay; and there is no co-pay. And then
16 the legislature says 100 percent reimbursement. The
17 statutes conflict. Our attorney may help us with that.

18 MR. CARDON: Next question. Is there -- it
19 would be interesting to know if there was general
20 consensus that that is -- that that should be corrected in
21 the law, that it should be covered. Is there general
22 consensus on that point? Could we ask?

23 CHAIRMAN O'HARA: Is there an opinion from
24 someone else that volunteers should not get reimbursed for
25 that amount? I haven't heard any.

1 MR. VANNAIS: On the one hand, you say there
2 is no co-pay to which the credit can be taken from. But
3 on the other hand, the Department recognizes that there
4 is, indeed, a co-pay the Department has to recover from
5 the owner-operator. So it's not the fact that there is no
6 co-pay. You have not recovered from the actual
7 owner-operator. Those costs can still be credited to that
8 co-pay once that owner-operator is found.

9 CHAIRMAN O'HARA: The Department's
10 interpretation of the statute, they can't do that, is my
11 understanding.

12 MR. BEAL: To have the volunteer not incur
13 expense, period. That's the end of it. You credit a
14 co-pay the State might recover from the original
15 owner-operator doesn't do a thing for the volunteer. It
16 just makes the owner-operator less.

17 MR. BINGHAM: I don't know if it is that
18 broad. The SAF can only pay for eligible costs. It is
19 100 percent of those eligible costs that your volunteer
20 gets reimbursed. So the notion that if you volunteer, the
21 likelihood that you will have to pay zero is not correct.
22 I mean, if there is costs that are performed that are not
23 covered by the SAF, that is between the volunteer and
24 whoever did the work for them.

25 MR. GILL: Except preparation costs for an

1 application shouldn't be questionable. It isn't I put in
2 two wells. Well, you should have only put one. It is you
3 have to do an application to get reimbursement on what was
4 done. There may be some questions within the document on
5 what was appropriate or what was not, but the application
6 cost is an application cost.

7 CHAIRMAN O'HARA: Again, I don't think -- is
8 there any disagreement that the spirit of the statute
9 allows volunteers to get complete reimbursement, that they
10 should get reimbursed necessary costs and appropriate
11 costs of filing an application? Is there any disagreement
12 on that issue? I haven't heard any.

13 MR. CARDON: Does the Department have a
14 particular point --

15 CHAIRMAN O'HARA: If the statutes allowed
16 it --

17 MS. NAVARRETE: If the statute allowed it,
18 of course, we would pay it.

19 CHAIRMAN O'HARA: So it seems from a
20 Commission standpoint, we could make a recommendation to
21 the legislature to make the statutes consistent.

22 MS. JAMISON: Mr. Chairman, I think we want
23 to know what the fiscal impact would be if we made that
24 recommendation.

25 CHAIRMAN O'HARA: Would that be

1 determinable?

2 MR. GILL: It is material.

3 MS. NAVARRETE: Impact to the fund?

4 MS. ROSIE: We can look into that.

5 MS. NAVARRETE: It would make a difference.

6 CHAIRMAN O'HARA: Mr. Kelley.

7 MR. KELLEY: Dan Kelley. For the record, my
8 name is Dan Kelley. Mr. Chairman, the Department --
9 according to this discussion right here, the Department is
10 basing its assertion that they can't pay the co-pay for
11 volunteer application preparation on statute. The statute
12 addressing this is 1052(a)(7), which states, "The
13 Department shall provide assurance account coverage for
14 the following." No. 7 is costs incurred for professional
15 fees directly related to the preparation of assurance
16 account application, period. The Department shall credit
17 these fees toward the applicant's co-payment obligation,
18 period, end of section. Okay?

19 The Department is choosing to interpret that one
20 way. They could choose to interpret it another way. A
21 volunteer has a zero dollar co-payment obligation. Credit
22 that to my co-payment obligation. Zero plus the cost is
23 the cost of the preparation. It is a discretionary
24 decision. I don't think we need to fix it in legislature.
25 I think we need to make a recommendation to the director

1 to address this issue and reevaluate it. Thank you.

2 MR. BEAL: He is right on the money,
3 recommend they pay it.

4 MR. CARDON: Mr. Chairman, this raises the
5 obvious question, has the Department had an interpretation
6 by the AG's Office that they shall -- that they must
7 interpret this in a specific manner? It would seem if the
8 Department has had a determination by the AG's Office that
9 they must interpret this statute in a specific manner,
10 then we will correct it by legislature. If it is -- if
11 that is not the case, then, perhaps this body could
12 recommend to the Department that they interpret it in a
13 different fashion. It would be nice to know the answer to
14 that question.

15 CHAIRMAN O'HARA: Does anybody have the
16 answer to that question? Do you know if there was an
17 actual AG's opinion that you are basing your
18 interpretation on?

19 MR. ROCHA: There was no actual AG opinion.
20 It is the interpretation from the AG's legal advice. The
21 question was raised and answered legally.

22 CHAIRMAN O'HARA: We could present a motion
23 that says if it is a positive determination, we think it
24 should be this and if not, recommend the legislature to
25 change that. I don't know how you want to phrase your

1 question.

2 MR. CARDON: A member of the Commission has
3 asked for the financial -- the fiscal impact. Such a
4 decision would -- Maybe this is something we could set for
5 a vote next meeting with that answer on the table.

6 CHAIRMAN O'HARA: Would that be -- Could you
7 get that information by the next meeting?

8 MS. NAVARRETE: Fiscal impact?

9 MS. JAMISON: Mr. Chairman, this may not be
10 helpful. But there is another avenue as well of
11 determining whether this statutory interpretation is
12 correct or required. And that is through the appeal
13 process where this could be an element of an appeal that
14 goes to an administrative law judge and then to the
15 Superior Court, if necessary. Apparently, this has not
16 been the subject of appeal to date.

17 CHAIRMAN O'HARA: I will explore that point
18 just for a second, what you just said. If it goes to a
19 hearing -- if it goes to an appeal and in that appeal the
20 Department says we are going to agree with you and grant
21 you the 10 percent, my understanding is in those
22 general-type appeal decisions, those aren't formally
23 announced and known; so that the party that did the appeal
24 has rights to that. Whereas, the parties that don't know
25 that, they don't get the benefit of that. It goes back to

1 the issue of the decision log. Are we trying to make
2 general policies so that everybody knows it, or are some
3 people getting benefits because they appeal the issue?
4 I'm not sure if they appeal it, that it is going to
5 actually help everybody. It may just help those people
6 that appeal it.

7 MS. JAMISON: My point was that if the
8 Department is convinced that this is the correct statutory
9 interpretation, then it will present that statutory
10 interpretation in an appeal if somebody raises the issue
11 on appeal. A determination by an administrative law judge
12 is not final. The administrative law judge makes a
13 recommendation to the director as to the decision on the
14 appeal.

15 After that, the director issues the final
16 decision; and that decision can be appealed to the
17 Superior Court. That would get it into the judicial
18 arena. I'm not recommending this necessarily. I think
19 people may be more successful if they address this to the
20 legislature and make the case there.

21 CHAIRMAN O'HARA: Mr. Kelley.

22 MR. KELLEY: I'll pass. Thank you.

23 CHAIRMAN O'HARA: Any other comments?

24 MR. GILL: I would just think that most --
25 Again, I don't see that that's an incentive for a

1 volunteer to spend money on attorneys to take it all the
2 way to the appeal process either.

3 MS. KELLEY: Ona Kelley for Tierra Dynamic.
4 Why is what the impact to the fund germane to whether the
5 statutes interpret -- I mean, are we interpreting statute
6 based on what it costs the fund? I don't understand the
7 correlation there.

8 MS. JAMISON: I'm just curious.

9 CHAIRMAN O'HARA: Mr. Beck.

10 MR. BECK: Brian Beck. Actually, I have two
11 comments. Again, under statutory requirement for
12 volunteers, they are supposed to get 100 percent
13 reimbursement.

14 MS. JAMISON: Of eligible costs.

15 MR. BECK: Actual costs.

16 MS. JAMISON: Eligible costs.

17 MR. BECK: Eligible costs, sorry.

18 MR. KELLEY: Costs incurred for professional
19 fees.

20 MR. BECK: The Department is supposed to go
21 back and seek the 10 percent co-pay from the
22 owner-operator, if they can find it. So it is the
23 Department's responsibility to go back and recover that
24 10 percent.

25 The UST volunteers to date, to my knowledge --

1 We've asked this several times, has the Department
2 actually gone back and tried to recoup those costs? And
3 they are in the hundreds of thousands of dollars. We have
4 heard no, they are not doing that. They are not set up to
5 even think about doing that type of thing. There is money
6 sitting out there that the Department should go after. As
7 far as affecting the fund, there shouldn't be any because
8 there is a mechanism for the Department to recover those
9 costs.

10 And second thing, as far as the appeal issue, we
11 did go through the formal. And we were told that the
12 volunteer has no standing by the AG's Office to appeal
13 that particular item based upon the current
14 interpretation.

15 CHAIRMAN O'HARA: Mr. Cardon.

16 MR. CARDON: Mr. Chairman, wouldn't it be
17 appropriate to set this for -- notice this for a vote at
18 the next meeting?

19 CHAIRMAN O'HARA: I agree.

20 Any more discussion? Ms. Foster.

21 MS. FOSTER: What would we be voting on?

22 CHAIRMAN O'HARA: There were two -- from
23 what I understood, there were two options. One, we could
24 recommend if it is a statutory issue that the legislature
25 could make the statute consistent. One says 100 percent.

1 One says get it from the co-pay. If, indeed, it is not a
2 legal interpretation but a policy interpretation by the
3 Department, we could recommend to the director to revisit
4 that because we think that the policy should be that
5 volunteers should get reimbursed for that 10 percent. So
6 it is more of a dual --

7 MR. CARDON: Exactly.

8 CHAIRMAN O'HARA: We'll put that up for a
9 vote.

10 Any other comments from the Commission members?
11 Public?

12 Moving on to Item 7, continuation of discussion
13 we've had a couple of times on the funding options for the
14 UST inspection and compliance program.

15 Did I understand from the minutes last time,
16 Ron, that you were going to make a presentation today with
17 some data?

18 MR. KERN: Ron Kern, DEQ. Mr. Chair, no,
19 there wasn't a presentation planned. What I had said at
20 the last one, we were still gathering together the --
21 compiling the information that we thought might be
22 pertinent to the Commission for further discussion. And
23 I'm still compiling that information. So I apologize, I
24 don't have anything today.

25 Plus, with the changeover in management --

1 senior management within the agency right now, I've got to
2 make sure I've got approval all the way to the top on what
3 I present to the Commission. So at this time, I would
4 like to see this agenda item carried through to the next
5 meeting, if possible.

6 CHAIRMAN O'HARA: That would be great.

7 MR. KERN: I would like to. Again, I've got
8 to get everything together.

9 CHAIRMAN O'HARA: I have a question. I was
10 going through the minutes. And I know that this is an
11 issue that we studied at length probably two years ago,
12 year and a half ago.

13 MR. KERN: It was '98-'99 time frame.

14 CHAIRMAN O'HARA: My recollection is this
15 Commission made a recommendation to the director that we
16 fully supported the efforts of the inspection and
17 compliance program. And we left the how and why or how
18 they do the funding up to the director. In fact, we may
19 have said let's get it from the general budget. But we
20 left that kind of to the determination of the director as
21 to how they wanted to increase that funding, whether it
22 was a tank fee or an increase in the funding.

23 So I think the recommendation still stands that
24 we agree and wholeheartedly support the Department. What
25 more do you want us to do? Actually get to the point of

1 saying how we want to fund that?

2 MR. CARDON: May I simply make an
3 observation, that part of that recommendation, as I
4 recall, was that the increase not be taken from the State
5 Assurance Fund.

6 CHAIRMAN O'HARA: Correct, you're right. We
7 can bring that recommendation forward so everybody is
8 familiar with it during next month's discussion.

9 I guess what I was trying to close the loop on
10 is what are we -- what more are we trying to do at this
11 point. I think actually Roger brought it up.

12 MR. BEAL: I believe Myron had a suggestion
13 of how to fund it.

14 CHAIRMAN O'HARA: So we actually want to go
15 into the funding and actually make some recommendations?

16 MR. BEAL: It's become apparent that more is
17 needed to have the people do the job properly. I think
18 Myron had an idea. I'm not really sure I can recall
19 exactly what it was. He did have it. That's what
20 we're...

21 CHAIRMAN O'HARA: I will bring some of that
22 information forward from our prior meetings. We will put
23 that on the agenda for next time.

24 Any other comments on this item, Item 7?

25 Item No. 8, moving on, this is an item we've had

1 on our agenda several times. And it deals with the
2 payment of the 10 percent co-pay and who is responsible
3 for making that payment. Is it the owner-operator, or can
4 a consultant or other party make that 10 percent co-pay?

5 We went into executive session. I read those
6 minutes, at the conclusion of which we said we would put
7 it back on the agenda and invite some input from the other
8 committee members. My understanding from reading those
9 minutes we only have two options, to really do nothing or
10 we can ask the Department to present their interpretation
11 of that statute as policy. There weren't really other
12 alternatives that I saw because, I think, the option on
13 the table was to ask for a legal opinion, which we don't
14 really have the option to do.

15 Any other suggestions? Do we want to ask the
16 Department to present the actual interpretation or the
17 policy of how they treat this issue or just do nothing?

18 MR. CARDON: Mr. Chairman, this matter is on
19 the agenda. It would seem that we as individual members
20 of the Commission ought to understand the issue or the
21 question.

22 And to clarify the question for myself, am I
23 understanding that there are two scenarios? The first
24 scenario is that a consultant charges for work performed,
25 that the charges are legitimate, that they are -- that

1 they are paid according to the statute, et cetera, and
2 that the State pays -- in this particular case, the State
3 would pay 9 percent of those charges and the regulated
4 party would pay 10 percent of the charges? Is that the
5 first scenario? Do I understand that correctly?

6 CHAIRMAN O'HARA: Yep.

7 MR. CARDON: And then the second scenario
8 would be that the -- in both scenarios we assume that
9 there are -- that the charges -- that the State does not
10 err, that the charges are all legitimate. But in the
11 second scenario, the consultant elects to take a
12 10 percent -- I don't know if it is 10 percent or not, but
13 a discount or, in other words, take from the money that --
14 from the 90 percent that they are paid by the State, take
15 from that -- that the consultant elects to take from that
16 money the 90 percent they are paid by the State, all of
17 which is according to the regulations, and pay back to the
18 State or to give to the regulated party the money that is
19 equal to the 10 percent and then the regulated party
20 gives -- Am I -- what am I missing?

21 CHAIRMAN O'HARA: You are close. In the
22 first instance, you are right. He submits a bill for \$1,
23 let's say. The State pays 90 cents. The owner-operator,
24 regulated party, pays 10 cents. So he was made whole, got
25 his dollar.

1 In the second scenario, he would submit the bill
2 for a dollar to the State. He would get 90 cents from the
3 State again. But instead of getting the 10 cents from the
4 owner-operator, he would just absorb it or not pay it.

5 MR. CARDON: So he takes a discount?

6 CHAIRMAN O'HARA: Basically a discount.

7 MR. CARDON: What is that, a 10 percent
8 discount on the gross cost?

9 CHAIRMAN O'HARA: Yeah.

10 MR. CARDON: A 10 percent discount. In both
11 scenarios, we are assuming that they are prepared equally,
12 that everything is according --

13 CHAIRMAN O'HARA: The State pays the same
14 amount in both cases. The question is whether the
15 statutes allow for an owner-operator not to have to pay
16 that 10 percent, to allow the consultant to absorb it. It
17 is more of a legal interpretation, I think, from the
18 Department's standpoint.

19 We have discussed the policy. I think there was
20 good points made on both sides. Some said they didn't
21 think it was right. Some said it was perfectly right, it
22 was a business issue and competition issue. I didn't see
23 there was a consensus one way or the other. It is more of
24 a legal definition, which we are not really here to solve
25 in my mind.

1 Any other comments?

2 Any comments from members of the public on this
3 issue?

4 MR. JONES: My name is Greg Jones. I have a
5 problem with kind of leaving out the point that if
6 invoices are submitted to the State saying this is what
7 was incurred, costs that were incurred, actually that
8 10 percent has never been incurred because nobody had the
9 intention of paying it. So it is kind of a fraudulent way
10 of getting this extra 10 percent somehow. Basically,
11 because you are submitting an invoice as, say, an
12 owner-operator that you have signed off on and said this
13 is the costs that have -- I have incurred, and, in fact,
14 if you are allowing a consultant to waive that, then, you
15 are not incurring that 10 percent. Really you should be
16 giving an invoice to the State for 90 percent of this
17 100 percent, I think that's being done now, because it was
18 never incurred.

19 CHAIRMAN O'HARA: Mr. Cardon.

20 MR. CARDON: Well, it seems to me,
21 Mr. Chairman, that that is a legitimate observation, that
22 they're -- and it does seem to me that there should be
23 some specific determination on that point. Now, whether
24 this Commission is the proper body to make that
25 determination or not, I don't know. But if a person signs

1 I have incurred a cost which, in fact, I have not
2 incurred, that would seem to be, like, a lie.

3 CHAIRMAN O'HARA: I think "incurred" and
4 "paid" are two different things. If they drilled a well,
5 there is a set cost ceiling for what they can charge for
6 that. How much they end up getting paid for it may be a
7 different issue. They did do the well. They incurred the
8 cost of drilling the well. How much they are entitled to
9 be reimbursed is really determined by the cost ceilings.
10 Assuming the cost ceilings are reasonable, it really comes
11 back to in both of your scenarios, they both drilled the
12 well. One got paid 10 cents more than the other. In my
13 estimation, it is a consultant discounting versus not
14 incurring the cost. He incurred the effort and manpower
15 to dig that well.

16 MR. CARDON: In any event, to address this
17 gentleman's question, that may not be the job of this
18 Commission. That may be some legal question.

19 CHAIRMAN O'HARA: I think it really is
20 legal. I think we're not here to decide that.

21 MR. KELLEY: Dan Kelley again.
22 Mr. Chairman, Mr. Cardon, just to reiterate, I'm sure you
23 guys remember, but just to reiterate, there are statutes
24 in the SAF statutes that specifically address this issue,
25 that if an owner-operator or a consultant submits

1 fraudulent claims against the fund and they are found
2 guilty of that, they are precluded from accessing the
3 fund. It is a very draconian measure. It is illegal. It
4 is improper. And it is the Department's obligation to
5 make sure it doesn't happen. There is a statute on the
6 books.

7 CHAIRMAN O'HARA: Any other comments from
8 members of the public? Mr. Beck.

9 MR. BECK: Real quick. I don't know any
10 professional consultants that are doing that, but I know
11 some cheesy contractors that are.

12 CHAIRMAN O'HARA: Any other comments from
13 members of the public?

14 MR. JONES: I have one more comment. Greg
15 Jones. You guys are talking as a Commission whether you
16 guys should do this or that. And, yet, you guys are
17 public officials that individually you can go to the AG
18 and ask for a determination. You don't have to do it as a
19 group. The director of the DEQ can do it as an
20 individual. You guys as individuals don't have to have a
21 consensus or anything. Just one person can go to the AG
22 and ask for that legal opinion. It is your right.

23 CHAIRMAN O'HARA: This issue came from a
24 member of the public, and I would encourage that member to
25 pursue that avenue, if they so desire.

1 MR. GILL: We were told we can't.

2 CHAIRMAN O'HARA: Okay. Moving on to
3 Item No. 9, a discussion of the DEUR fee rule, DEUR.
4 Thank you.

5 MR. BINGHAM: Declaration of
6 environmental-use restriction.

7 CHAIRMAN O'HARA: Would you explain that
8 again.

9 MR. BINGHAM: It is the declaration of
10 environmental-use restriction.

11 CHAIRMAN O'HARA: Deed restriction. I know
12 Roger had some concerns and wanted this on the agenda, so
13 I will turn it over to Roger.

14 MR. BEAL: In investigating what a DEUR
15 might entail, it comes to light that there is a fee
16 proposed that's in proposed rule now to go along with a
17 DEUR in order to finance the Department's obligation to
18 fulfill the DEUR standing with the conditions that the
19 DEUR puts on. If you have an on-site or, I guess, an
20 engineering control, then you have to know that that
21 engineering control is maintained until the DEUR can be
22 removed. The fee is -- without being too negative, it is
23 sort of crystal ballish as to what might be incurred over
24 the life of the DEUR.

25 An example is if you are going to monitor the

1 condition of a monitoring well for 30 years after the site
2 has been closed, then the person that has the site has to
3 pay the DEUR fee to assure the money is going to be there
4 for the Department to monitor the monitoring well.

5 I'm sort of disappointed that as a Commission
6 member and looking at corrective action and the RBCA
7 process, while I understood the DEUR was a restriction
8 placed on the deed, I as a Commission member did not
9 realize that there would be a 5- to \$20,000 fee associated
10 with that that may not be reimbursable from the SAF fund.
11 And it makes me question the fact that we use the term
12 "closure" at all as the same work that was going on before
13 the word "closure" got involved with the site is going on
14 after the word "closure" is involved with the site, really
15 negating the benefit of RBCA, in my mind, which was
16 risk-based closure, meaning closure, not a change in
17 financing policy.

18 Now, this is not with the UST program. Who is
19 doing this, what department?

20 MR. BINGHAM: The DEUR process is under the
21 capacity development section.

22 MR. BEAL: Capacity development section is
23 the one that's putting this forward. And the rules are
24 proposed now. So I would say even the ADEQ, nobody knew
25 what the fees were going to be. And now they are being

1 bantered. And the projected lifetime, for example, of a
2 monitoring well is 30 years. Are you going to watch my
3 monitoring well 30 years or not? I don't know. So how
4 you can take from me upfront the fee for doing that is
5 even more crystal ballish. And then how much is it going
6 to cost to adequately accomplish the task is something
7 else.

8 I mean, I guess I'm trying to say that I
9 understood what a DEUR was. But I didn't understand the
10 application of the DEUR. And I'm disappointed in that
11 because we spent a lot of time on RBCA. And my conclusion
12 right now is to no benefit if a DEUR is involved. I'm
13 willing to say that there may be an awful lot to this that
14 I don't understand, and there is, which is why it's here.
15 But it is a rule that's being proposed and something that
16 I think this Commission needs to become aware of and
17 participate in in one manner or the other as we've not
18 been told about it.

19 Jim Lawless, I believe, is heading that up. It
20 went to the 23rd of August. It was put on the
21 administrative calendar.

22 MR. BINGHAM: There has been a work group.
23 And I believe Myron Smith was on that work group. And I
24 think there are several other people that's been involved
25 in that process.

1 MR. GILL: Jim Trotter was involved. Myron
2 delegated.

3 MR. BINGHAM: To be quite honest, I didn't
4 attend any of them; so I don't know.

5 MR. BEAL: I think it has tremendous impact
6 on what we've done and how we view the future of the
7 program of the benefits of RBCA. And now all of a sudden,
8 all that work, in my instantaneous reaction, it is sort of
9 negated. And why anybody would choose a RBCA process to
10 take themselves out of the financial mechanism is beyond
11 me.

12 CHAIRMAN O'HARA: That fee would not be
13 reimbursable. It would not be closed at that point?

14 MR. BEAL: No. You are paying upfront. If
15 you had a DEUR to go onto your property -- and say for a
16 minute I'm ADEQ, I'm going to say it is going to take me
17 30 years to check your site out. And I need the money
18 right now to fund my operation for 30 years. That doesn't
19 include the fact that you're still going to have to go on
20 with your consultant to do the work.

21 CHAIRMAN O'HARA: Why is that not
22 reimbursable?

23 MR. BEAL: Because you're closed. RBCA says
24 closed, you're closed. But I need all this money, and I
25 need you to keep working at it.

1 CHAIRMAN O'HARA: Mr. Cardon.

2 MR. CARDON: Mr. Chairman, this raises the
3 following question and then a larger question. The first
4 question is: Is a DEUR literally voluntary or a free
5 option of the property owner? And to which I don't have
6 an answer.

7 The second question is kind of like an extension
8 of the first question. And that is: Under the RBCA
9 program, will it be possible for a property owner to clean
10 their property to a level that they would care to clean it
11 to and be eligible for the fund? And those two questions
12 should definitely at the appropriate time be questions
13 that this Commission addresses.

14 CHAIRMAN O'HARA: Do we have any answers for
15 those questions?

16 MS. FOSTER: Mr. Chairman, on the first
17 question, a person -- my understanding of the DEUR is that
18 you can do -- you can either go after the DEUR for your
19 property or you can continue with your remediation.
20 Whether or not that remediation is covered under SAF is
21 another question. But the option is the owner-operator's.
22 You can go either direction on that.

23 MR. CARDON: Which then leads to that second
24 question. What will the interpretation be with respect to
25 the level to which an owner-operator can clean up? And

1 that is something that should come before the Commission
2 at the appropriate time.

3 MS. JAMISON: Mr. Cardon, Mr. Chairman, the
4 statute says if the owner elects to remediate to
5 nonresidential uses, then you may use the DEUR. So if the
6 remediation continues so that the accommodation levels are
7 reduced to make it suitable for residential uses, then
8 this just isn't implicated.

9 MR. CARDON: However, that is the very point
10 that needs to be addressed because there are other
11 proposals that what is residential and if a person has
12 zoning that is commercial that includes some type of
13 residential use, that's an open question, as I understand
14 it, still and one that needs to be addressed. I have got
15 to excuse myself.

16 MR. GILL: I would like to have whoever is
17 in charge of those meetings let us know what's going on.
18 I mean, as far as I understand, there has been two
19 meetings. I attended the second one thinking there had
20 been more. They are basically trying to keep people out
21 of the meeting, which doesn't make any sense.

22 CHAIRMAN O'HARA: Keep people out of the
23 meeting? By not telling you or something?

24 MR. GILL: They basically uninvited people
25 to the meeting. I would like to know what's -- I have

1 been waiting for a second -- or for another meeting
2 notice, and I have not heard a thing.

3 CHAIRMAN O'HARA: Ian, do you know who we
4 can request to attend next meeting to maybe give us a
5 short presentation?

6 MR. BINGHAM: I will go back and discuss it.

7 CHAIRMAN O'HARA: This will be on the agenda
8 next meeting also.

9 Any more comments on the DEUR fee rule by
10 committee members?

11 MR. BEAL: Just one to Nancy. Your statute
12 is quite clear. I think the part that's not known is the
13 impact of the DEUR fee in the process of making it not to
14 residential and why you would -- it just took a lot of the
15 effectiveness or it may take a lot of the effectiveness
16 away from the RBCA process. And perhaps it is an
17 industrial place that should be left in a RBCA closure
18 with a DEUR put on it to everybody's benefit but not with
19 the fee.

20 I mean, it almost makes no sense to say, yeah,
21 it is good enough to close and we are going to monitor it
22 some more. If you want to get it to residential, there is
23 other things in here. I'm just fixated on the fee taking
24 away the advantages of the RBCA process.

25 MS. JAMISON: This is a fee rule that hasn't

1 been adopted yet, I take it?

2 MR. BEAL: Exactly. It is in the process
3 now.

4 MR. BINGHAM: I want to just add a little
5 clarification to the monitoring that goes on. Part of the
6 DEUR process, the DEUR is a use restriction. And some of
7 the continuing monitoring is the assumption that went in
8 at the time the DEUR was placed hasn't been maintained.
9 If you follow a DEUR, this is an industrial zoned --
10 industry-zoned property. So the assumption there, you are
11 not going to have a day-care built on this thing.

12 Therefore, the elevated concentrations are not posing a
13 risk to public health, human health, and the environment.

14 Ten years down the road, zoning may change and
15 all of a sudden, boom, here comes a day-care. It is a
16 means of raising a flag to somebody because maybe whoever
17 purchases the property may have purchased an entire area
18 and didn't search each title properly. But it is for the
19 Department to ensure that the uses of that property has
20 not changed to the point where now there is a risk and an
21 impact to human health and the environment. And that's
22 just so everybody kind of has an understanding what that
23 monitoring prospectively is all about.

24 CHAIRMAN O'HARA: Mr. Cardon.

25 MR. CARDON: Mr. Chairman, Ian, that is

1 precisely the point. And I am -- this is not just a
2 personal issue with me. What I'm trying to say is that
3 this is a specific issue that has been on the burner for
4 literally years and that the regulated community has great
5 interest in and that want to be heard, like, every facet.

6 The point is, is that if a property is used for
7 some commercial purpose like, for example, a gas station
8 and the zoning allows for a day-care center in the same
9 zoning, then it should be the right of the landowner to
10 use -- to clean up to any level that is allowed in the
11 zoning and not just for the current by-the-moment use
12 today.

13 I don't -- obviously is not -- today is not the
14 time to debate that and have the Commission take a
15 position, et cetera. But that is a question that is on
16 the table that is open that many people would like to have
17 input into.

18 CHAIRMAN O'HARA: Any comments from the
19 public on the DEUR issue? We'll have that on the agenda
20 next meeting.

21 Moving on to Item 10, I think this was on the
22 agenda last meeting and I put it on again. I just want
23 to -- in looking forward to our annual report in December,
24 I wanted the Commission members to take a look at our
25 mandates and make sure that there is nothing the

1 Commission members feel is important for us to take a look
2 at this year that we haven't yet done. I know they are
3 broad mandates.

4 And I think, for instance, your subcommittee
5 addressed quite a few of those in the recommendations
6 today. So I think we are kind of in a general way
7 accomplishing our mandates. But I want to make sure there
8 is none specifically we're missing.

9 I know phase-out was one that was in there. And
10 my understanding on phase-out was that we had an actuarial
11 study that said everything was going great. At the time,
12 we decided we would monitor that and revisit it down the
13 road if we needed a phase-out date.

14 I wanted to give the members an opportunity to
15 let me know if there was something we need to look at in
16 the next couple months so we accomplish our mandates. Or
17 do you think we're doing an adequate job?

18 Mr. Cardon.

19 MR. CARDON: Excuse me. I have a lot to say
20 today and I apologize. I agree with you, Mr. Chairman,
21 that the recommendations brought forth by the technical
22 subcommittee and specifically the question of the budget
23 allocation are very definitely -- those issues very
24 definitely fall under the UST Policy Commission mandates
25 and they are an essential part of the mandate. And it

1 would appear that we are addressing them, and I look
2 forward to continue to address those in a more detailed
3 manner.

4 CHAIRMAN O'HARA: Okay. Any other comments?
5 Members of the public? Mr. Beck.

6 MR. BECK: Yes. There has been several
7 groups and we have been reviewing the transcripts from the
8 Commission meetings over about the last two years just to
9 see outstanding issues, actually, the Policy Commission
10 brought up but never acted upon. Just to give you a few
11 of them, what we have found to date, like, November 2000,
12 based on a request from Mr. Cardon, Mr. O'Hara, and
13 Ms. Foster, ADEQ was to provide a policy, guidance, or
14 procedure for reopening sites that had been closed for
15 more than one year. This policy, guidance, or procedure
16 was to have included examples of causes to reopen a site,
17 the procedure for establishing SAF eligibility, newly
18 regulated compound causes of reopening, and when new
19 release numbers would be assigned. That was formally
20 requested by three different members back in November 2000
21 of the agency, and nothing has been done yet.

22 January 2001, requests by Mr. Denby, O'Hara, and
23 Cardon, ADEQ to provide an update on insurance
24 requirements and financial responsibility. ADEQ also
25 requested to provide a definition of what an open site is

1 how are they handling these sites. Nothing has been done.

2 Requested by Ms. Foster at the same time, what
3 is the number of work plans and corrective action plans
4 awaiting for review.

5 March 2001, request by Mr. Gill, Denby, and
6 Foster, ADEQ Web site to be updated to include notices of
7 meetings with various Policy Commission activities,
8 posting of SAF, CRU, and UST materials. Still haven't
9 seen anything.

10 July 2001, interesting statement, ADEQ,
11 Department does not want any activity that's going to
12 drive up cost. Request by Mr. Denby, Cardon, Beal,
13 O'Hara, and Mr. Beal, ADEQ to provide a policy on
14 49-1054(c), what the procedure was before August 2000.
15 ADEQ to provide a list of policy, guidance, procedures,
16 their decisions, what they are made of, and when they were
17 effective.

18 August 2001, statement by ADEQ, there is no list
19 of policies, guidance, or procedures. We make decisions
20 based upon interpretations of law. Request from
21 Mr. Denby, Cardon, Beal, O'Hara, and Gill, ADEQ to provide
22 a list of decisions and when they were effective.

23 Statement by ADEQ same date, August, SAF backlog
24 will be gone by the end of the year. The increased number
25 is due to training the staff to be on the same page.

1 September 2001, request by Ms. Foster, what's
2 the RBCA backlog?

3 October 2001, request by Ms. Foster, ADEQ to
4 provide the number of RBCA documents that have not been
5 approved and how long they have been sitting.

6 November 2001, ADEQ statement, direct-pay
7 applications will be processed faster, backlog is up. It
8 will be done by January. ADEQ statement -- or ADEQ
9 presents a presentation on the electronic reimbursement
10 application. Request from Mr. O'Hara, Smith, and Denby,
11 SAF, CRU, UST materials to be posted on the ADEQ Web site.
12 ADEQ provide a written policy on electronic application
13 process. ADEQ should also supply notification on the
14 electronic application as it created the application
15 number and the points at the time of the creation to RP.
16 That still is not being done.

17 March 2002, ADEQ makes a presentation on the
18 180-day interest, what is a complete application on the
19 40-day review on appeals. Requests from Mr. O'Hara,
20 Denby, Mr. Gill, ADEQ to provide a written statement on
21 the presentation. Still has not been done to this board
22 or made available to the public.

23 April 2002, request by Mr. O'Hara, Denby,
24 Cardon, and Mr. Gill, ADEQ to provide process to reopen
25 sites and new release number assignments, new regulated

1 compounds, and record decisions. Also on that date
2 request by Mr. Denby and Mr. Gill, ADEQ to provide a copy
3 of new checks for reviews of the applications.

4 CHAIRMAN O'HARA: Thank you, Mr. Beck.

5 Mr. Jones, you had a comment.

6 MR. JONES: I'll pass. Actually, I'm sorry.
7 On your actuary study, you say everything was rosy. Is
8 that what --

9 CHAIRMAN O'HARA: I may have paraphrased.

10 MR. JONES: I thought there was, like, three
11 sentences in that actuary study that said increase taxes
12 in conjunction with reducing claims and increasing
13 co-payments in order to get this thing back in the black.

14 CHAIRMAN O'HARA: I think what I meant to
15 say is the conclusions of the study showed that the
16 current situation was improving. It would continue to
17 improve to the point where by 2011 or -13 there would be
18 no more backlog. It would all be on a pay-as-you-go
19 basis.

20 MR. JONES: You said it was improving.

21 CHAIRMAN O'HARA: The situation was as bad
22 as it was ever going to get last year. I think it was
23 80 million that was solvent. That was going to be slowly
24 resolved to be zero by the year 2013. Once again, I think
25 we did ask for -- or try to recommend that we update that

1 study periodically to make sure that those findings were,
2 indeed, adequate. I think we will bring that up at the
3 end of the year to recommend some funding for an update of
4 that study. Thanks for the clarification.

5 Moving on to Item No. 11. I have got quite a
6 few items already for next month's agenda. Is there
7 anything else members would like to see on next month's
8 agenda other than what we've got? You can always e-mail
9 me if you have something in the interim.

10 Anyone from the public have some comment?
11 Mr. Kelley.

12 MR. KELLEY: Dan Kelley. Mr. Chairman, on
13 last month's agenda, there was an item, I believe it was
14 actually an item you had discussed with me and a couple
15 other people. It is the issue with the new corrective
16 action rules, are we going have to submit a Tier 2
17 assessment on every site, okay? That was on the agenda.
18 We were supposed -- Nobody was prepared to discuss it last
19 month, so we were going to discuss it this month. It
20 didn't show up on this month's agenda.

21 CHAIRMAN O'HARA: It is on the agenda
22 actually, Item 5.

23 MR. KELLEY: What did we get as far as a
24 statement on that?

25 CHAIRMAN O'HARA: The comment was made there

1 was going to be a meeting.

2 MR. BINGHAM: Training meeting.

3 CHAIRMAN O'HARA: Training meeting that
4 would go over all the details of new rules and address
5 those items that are in Item 5.

6 MR. KELLEY: Right.

7 CHAIRMAN O'HARA: If there is any comments
8 that come out of that, we will bring forward.

9 MR. KELLEY: Can we just put an agenda item
10 on there for next month to discuss the outcome of this
11 training session and any questions and issues that were
12 raised as a result of that training session?

13 CHAIRMAN O'HARA: Okay.

14 Any other comments from the public on the agenda
15 items for next meeting?

16 Now general call to the public, any items at all
17 the public would like to bring up? Going once. Okay.

18 Item No. 13, announcements. Our meeting, I
19 believe, next month is scheduled for the 16th. There has
20 been a request, I think, by Al because of an ATMA meeting
21 on the same date that we possibly look at postponing that
22 a week. Any committee members going to the ATMA meeting?

23 MS. JAMISON: That would make it the 23rd?
24 I could come then. I can't make it the 16th.

25 CHAIRMAN O'HARA: 23rds look okay for

1 everybody? We will change the meeting to the 23rd of
2 October.

3 Look forward to seeing you then. This meeting
4 is adjourned. Thank you for coming.

5 (Whereupon, the proceedings adjourned at
6 11:53 o'clock p.m.)
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4 I, JENNIFER SCHUCK, Certified Court
5 Reporter, Certificate No. 50020, State of Arizona, do
6 hereby certify that the pages numbered from 1 to 100,
7 inclusive, constitute a full, true, and accurate
8 transcript of all proceedings had in the foregoing matter,
9 all done to the best of my skill and ability.

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